

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE TEXAS AND PACIFIC RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated the rules of the parties' Agreement effective November 16, 1945 and Supplemental Memorandum of Agreement dated July 23, 1949, when on March 5, 1951 and continuing through December of that year during which time claims were filed by employees working on the mail platform at Fort Worth, Texas, who held seniority rights under the Clerks' Agreement, account Carrier using L. W. Spinks, N. E. Walker, R. B. Dean, J. W. McCrory, E. L. Giles, J. A. Carpenter, W. T. McWhorter, S. E. Johnson, C. R. Wise and others, persons employed in outside industry, and holding no seniority rights under the Clerks' Agreement to perform work on the mail platform when employees with seniority were available, ready and willing to work, were not used.

(2) That Carrier now be required to allow payment of one day at time and one-half for each of the employees shown below for each day shown opposite his name:

J. C. Easterwood .....	March 4, 1951
J. F. Matranga .....	Mar. 4—Nov. 25, 1951
M. E. Woodson .....	Mar. 4—Nov. 25, 1951
B. Abelson .....	Dec. 14, 15, 1951
Earl Adair .....	Dec. 12, 13, 1951
O. L. Anderson .....	Dec. 13, 14, 1951
W. W. Arnold .....	Dec. 11, 1951
A. L. Barrett .....	Dec. 11, 1951
H. C. Barton .....	Dec. 11, 1951
Otis Biggers .....	Dec. 12, 13, 1951
B. W. Brawner .....	Dec. 11, 1951
W. E. Briggs .....	Dec. 11, 1951
Harold L. Brook .....	Dec. 11, 12, 1951
J. R. Bryant .....	Dec. 14, 15, 1951
Delfina Cardenas .....	Dec. 12, 13, 1951
N. T. Carter .....	Dec. 12, 13, 1951

F. S. Cates ..... Dec. 16, 1951  
 J. W. Choate ..... Dec. 16, 1951  
 A. H. Clark, Jr. .... Dec. 12, 13, 1951  
 J. H. Cockran ..... Dec. 11, 12, 1951  
 Jas. I. Cook ..... Dec. 14, 15, 1951  
 W. R. Cornelius ..... Dec. 19, 1951  
 M. M. Cowart ..... Dec. 14, 15, 1951  
 Jas. C. Cox ..... Nov. 17, 23, 24, 30; Dec. 1, 14, 15, 1951  
 N. D. Crone ..... Dec. 15, 16, 1951  
 J. C. Easterwood ..... Nov. 24, 25; Dec. 1, 2, 15, 16, 1951  
 H. C. Foster ..... Dec. 14, 15, 1951  
 Bryant Gaines ..... Dec. 19, 1951  
 R. E. Gaines ..... Nov. 21, 22, 28, 29; Dec. 12, 13, 1951  
 W. B. Gaines, Jr. .... Nov. 21, 22, 28, 29; Dec. 12, 13, 1951  
 W. H. Garner ..... Nov. 17, 24, 30, Dec. 1, 14, 15, 1951  
 C. C. Garrett ..... Dec. 14, 15, 1951  
 R. E. Garrett ..... Dec. 14, 15, 18, 1951  
 L. M. Grant ..... Nov. 24, 25; Dec. 1, 2, 15, 16, 1951  
 W. C. Hardgrove ..... Dec. 12, 13, 1951  
 W. H. Harwell ..... Dec. 18, 1951  
 C. W. Hayes ..... Dec. 11, 1951  
 H. L. Hawkins ..... Dec. 13, 14, 1951  
 J. C. Hodges ..... Dec. 13, 14, 1951  
 R. G. Hodges ..... Dec. 13, 14, 1951  
 Tom Hudson ..... Dec. 20, 1951  
 D. J. Hynds ..... Dec. 18, 1951  
 R. A. Hynds ..... Dec. 18, 1951  
 W. E. Johnson ..... Nov. 17, 23, 24, 30; Dec. 1, 12, 13, 1951  
 W. M. Jones ..... Dec. 14, 15, 1951  
 Otis C. Key ..... Dec. 16, 1951  
 Z. O. Kimbell ..... Dec. 15, 1951  
 F. L. Laine ..... Dec. 12, 13, 1951  
 E. B. Lassiter ..... Dec. 16, 1951  
 J. H. Lewis ..... Dec. 15, 1951  
 Steve Lorwy ..... Dec. 15, 1951  
 A. C. McAnnis ..... Dec. 13, 14, 1951  
 L. J. McGowen ..... Dec. 11, 12, 1951  
 J. R. McNeely ..... Dec. 19, 1951  
 R. N. Martin ..... Dec. 14, 15, 1951  
 J. F. Matranga ..... Dec. 16, 1951  
 D. W. Moates ..... Dec. 12, 13, 1951  
 T. C. Martin ..... Dec. 14, 15, 1951  
 T. Moseley ..... Dec. 13, 14, 1951  
 P. A. Newby ..... Dec. 11, 1951  
 B. N. Ownes ..... Dec. 11, 1951  
 J. C. Parker ..... Dec. 11, 1951  
 J. H. Pitts ..... Dec. 16, 1951  
 L. S. Pitts ..... Dec. 16, 1951  
 M. R. Pitts ..... Dec. 12, 13, 1951  
 M. B. Posey ..... Dec. 15, 1951  
 A. R. Roberson ..... Dec. 11, 12, 1951  
 R. V. Smith ..... Dec. 12, 13, 1951  
 F. G. Sowell ..... Dec. 11, 12, 1951  
 Z. C. Stubblefield ..... Dec. 11, 12, 1951  
 B. B. Summerline ..... Dec. 14, 15, 1951  
 G. C. Sutton ..... Dec. 15, 16, 1951  
 J. E. Taylor ..... Dec. 11, 12, 1951  
 W. J. Terry ..... Dec. 13, 14, 1951  
 R. C. Tuckness ..... Dec. 15, 1951  
 D. S. Vaughn, Jr. .... Dec. 11, 1951  
 Joe Walker ..... Dec. 11, 13, 1951  
 A. J. Walls ..... Dec. 11, 1951  
 W. W. Warren ..... Nov. 17, 18, 24, 25; Dec. 1, 2, 15, 16, 1951  
 P. H. Whitaker ..... Dec. 11, 1951  
 R. M. Williams ..... Dec. 13, 14, 1951

A. E. Wilson ..... Dec. 11, 1951  
 W. C. Wolverton ..... Nov. 17, 24, 30; Dec. 1, 14, 15, 1951  
 C. O. Wood ..... Dec. 16, 1951  
 M. S. Wood ..... Dec. 16, 1951  
 M. E. Woodson ..... Dec. 2, 16, 1951  
 B. M. Woolverton ..... Dec. 11, 1951  
 C. A. Worley ..... Nov. 29, 30; Dec. 13, 14, 1951  
 J. F. Worthington ..... Dec. 14, 15, 1951  
 J. R. Gaines ..... Dec. 13, 14, 1951  
 O. W. Kethley ..... Dec. 11, 1951

**EMPLOYEES' STATEMENT OF FACTS:** The Texas and Pacific Railway Company operates at Fort Worth, Texas a large passenger and mail terminal adjacent to the U. S. Post Office Building. These facilities are used by the Fort Worth and Denver City and Missouri-Kansas and Texas Railway Companies as well as the Texas and Pacific Railway Company. In the building located adjacent to the Texas and Pacific Passenger Station the Post Office Department receives and dispatches large quantity of U. S. mail and parcel post. Mail is sacked by the Post Office Department and delivered to the mailroom located in the passenger station by means of a belt conveyor system. From this mailroom U. S. mail and parcel post is assorted, loaded and transported by means of motor driven vehicles to the respective outgoing trains. All incoming mail is handled in like procedure.

A large number of employees work in the mailroom located in the Passenger Station at Fort Worth. The payroll classification of these employees are "mail handlers" or "mail truckers." The assigned hours of these employees are as follows:

6:30 A. M. to 3:00 P. M.  
 3:00 P. M. to 11:30 P. M.  
 10:00 P. M. to 6:30 A. M.

The duties of these employees on their respective shifts and positions are those of unloading incoming mail received on the respective passenger trains and delivering same to Post Office Department. Likewise on outgoing mail delivered by the Post Office Department is assorted, delivered and loaded on outgoing passenger trains according to destinations.

On March 4, 1951 the Carrier employed and used on the above "mail handlers" positions, persons who were employed elsewhere in outside industry, or were employed as City Firemen and Policemen and other branches of the municipal and county governments. These persons were only interested in working during their off hours and days of their regular employment and had no intention of becoming bona-fide employees of the Carrier, but were only interested in earning a little extra money to supplement their regular salaries. These persons were termed "outsiders" since they were not interested in working regularly or becoming bona-fide employees of the Carrier.

The practice of using "outsiders" or persons without seniority under the Clerks' Agreement has been protested continuously since its inception.

On August 24, 1947 Division Chairman Edsall met with Stationmaster Oster and agreed upon an extra list rule governing the mail and baggage room employees at the Fort Worth Terminal (See Employees' Exhibit No. 1). On same date Division Chairman Edsall advised General Chairman McCluskey of the proposed agreed upon-rule. (See Employees' Exhibit No. 2).

On November 28, 1949 Asst. General Chairman Edsall wrote stationmaster S. F. Johnson protesting the use of part-time or emergency employees to perform any extra work at the mail room, contending that all the work on the mail platform rightfully belonged to employees with seniority and those that are carried on the regular extra list. (See Employees' Exhibit

members of the craft without hostile discrimination, fairly, impartially, and in good faith.'

So ends the decision from the court.

Activities of labor organizations resulting in the procurement of employe benefits are costly, and the only source of funds with which to carry out these activities is the funds received from members of the organization. We therefore believe that it is essentially unfair for non-members to participate in the benefits of those activities without contributing anything to the cost.

Now, look at the very situation we have. The Supreme Court said: 'You have got to bargain for all the people in the class or craft, and you have got to give them everything you bargain for, and you can't discriminate, and you can't unfairly treat the fellows who do not belong to the union, but you must represent them. Your status is that of a legislator, and you are legislating for them,' and the union member refuses to maintain that position.

Suppose all the members of a class or craft refused to join the union, but they voted for it as a bargaining agent, where in the name of common sense would the union get any money to carry out the duties imposed on it by the law? Now, you can argue that two and two added together would make four, but it does not work out that way. These unions do not live on air but must have money to carry on these activities, and the only way in which they can get that money is out of the people that belong to them, but I will deal with that a little more later on.

This is especially true when we realize that the collective bargaining representative is the one from whose existence and activities the non-member derives most important benefits and the one which is obligated by law to extend these advantages to him."

Neither the Carrier, nor this Board, can say whether the Brotherhood would be violating the law if it had and enforced the principle for which it contends in this case. Neither the Carrier nor this Board can say whether an award favorable to the Brotherhood would be valid as against such an attack. Only the courts would be able to settle that question.

But there is no reason for the courts to have to settle it, because the Carrier never made any such contract, and this Board should by all means deny these claims as being wholly without merit.

All known relevant argumentative facts and documentary evidence are included herein, but the Carrier requests permission to submit such additional evidence and argument as may appear appropriate after it has seen a copy of the submission by the organization.

All data submitted in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular questions in dispute.

(Exhibits not reproduced)

**OPINION OF BOARD:** The Carrier operates a large passenger and mail terminal at Fort Worth, Texas. A large number of employes are employed in the mail room in the handling and trucking of mail. During peak periods, the Carrier used "employe status" employes to perform extra work on short hour days and non-continuous eight hour days. These employes were persons otherwise occupied in outside industry but who covet work a few hours at a time during peak periods at the mail room. They included city firemen and policemen, soldiers, and persons holding other outside employment who were willing to work during their hours off. We shall refer to

these persons as outsiders as a matter of convenience. In March and December, 1951, a large number of such outsiders were used to augment the regular force of mail handlers and truckers. It is the contention of the Organization that they were improperly used and that claimants should be paid an extra day at the overtime rate for each day that such outsiders were used. The use of outsiders during peak periods and seasonal increases in business appears to have constituted a source of trouble on this Carrier for a long period of time. There is evidence in the record that the dispute has been solved subsequent to the bringing of this claim to this Board, leaving only the present claim for resolution.

The dispute involves, primarily, the meaning and application of Rule 3 (a), 3 (b) and 3 (c), current Agreement. The applicable parts of these rules provide:

“(a) An individual acquires an employe status at the time his pay starts subject to the provisions of Rule 20.

(b) Seniority begins at the time an employe is assigned to a position in accordance with the rules of this agreement in the seniority district and group where assigned.

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(c) The fact that seniority of an employe is not established and listed upon the seniority roster until assigned by bulletin will not operate to deny to such employe the right to perform extra and/or relief work at the point where employed in the order of his employment date, when such work is not performed by employes that have established seniority.”

The first question to be determined is whether or not Rule 3 (a) was intended to include employes working short hour days or eight non-continuous hours in a day. We think it does under the present Agreement on this property. It has been mutually so considered by the Carrier and the Organization for a long period of time. The evidence on this question is very voluminous and we shall content ourselves with a statement of our conclusions of fact that lead to this result. (1) In Awards 897 and 2067, involving disputes arising between the Clerks' Organization and this Carrier at its Fort Worth mail handling facility, similar claims were denied. (2) In 1945, the Organization and the Carrier submitted a rules dispute to arbitration which resulted in Mediation Case A-1801. In the proceedings the Organization's representative conceded the right of Carrier to use short hour day employes and employes working eight non-continuous hours and sought rules eliminating their use. The Organization was unsuccessful in this. The arbitration did result in several new rules including Rules 3 (a), 3 (b) and 3 (c) presently before us. (3) On March 15, 1950, the Organization's General Chairman made a claim in behalf of one D. C. Brooks in which it was urged that Brooks, although he had worked only as an employe status employe in short hour day work, had rights under the Agreement that prevented the Carrier from disapproving a subsequent employment application for the reason that he had already earned employment rights. The Carrier sustained the General Chairman's views, withdrew its disapproval of the second employment application, and paid Brooks a net loss in wages in the amount of \$311.64. It seems clear that the Organization considered outsiders so used as regular employe status employes from the first time they were used on short hour days or on eight hour non-continuous work. (4) It also appears that these outsiders when cut off in force reductions were required to comply with Rule 14 (f) in order to retain rights to recall for extra part time peak load work. There is no record that the Organization ever protested this method of handling. In fact, it was consistent with the position it took in the handling of the Brooks claim. (5) These employes (outsiders) were required to join the Organization under the terms of the Union Shop Agreement entered into on this Carrier at the instance of the Organization, clear

evidence that they had agreement rights under the current Agreement. The foregoing demonstrates that the Carrier and the Organization considered that these outsiders had rights under the Agreement even though they had never acquired seniority as a regular employee. Having assumed and contended for such rights on behalf of these employees, the Organization is estopped to take any different positions in handling claims for regularly assigned employees admittedly meeting the requirements of employees with seniority under the Agreement.

It would seem therefore that the outsiders involved indirectly in this claim acquired an employee status under Rule 3 (a). They never attained seniority under Rule 3 (b). They attained a right to perform extra and/or relief work where employed in the order of their employment date when regular employees with established seniority were not available to perform it under Rule 3 (c). This latter provision clearly means that if regular employees with established seniority were not able to perform it at straight time, and there were no extra or furloughed employees with established seniority available, these outsiders with employee status rights were entitled to perform it before the Carrier is required to use such employees with established seniority at the overtime rate. This conclusion is based on the rules as mutually interpreted and applied on this property, and constitutes a controlling precedent under similar rules when accompanied by similar mutual interpretations, conduct and practice on the property which support the estoppel theory underlying the confronting case.

The conclusion reached makes it unnecessary to consider questions of jurisdiction, laches, and other alleged defenses asserted. A denial award is required.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated for the reasons stated in the Opinion and Findings.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.