

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**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violates the current Clerks' Agreement at Sweetwater, Texas, when it denies to J. V. Baugh, Stowman in Freight Warehouse, the right to perform work on a day which is not a part of any assignment; and,

(b) J. V. Baugh shall now be paid four (4) hours at rate of time and one-half for each Saturday from October 9, 1952, forward until violation corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, regular assigned clerical and related employees covered by the Clerks' Agreement on the G.C.&S.F. Railway were guaranteed and assigned six days of eight hours, or 48 hours per week. The unloading, loading, trucking and handling of all less-than-carload freight at the Sweetwater, Texas, Freight Warehouse was, prior to that date, handled by a force of Class 3 employees regularly assigned in that facility. Effective September 1, 1949, all non-operating employees, including the clerical and related employees at the Sweetwater Freight Warehouse on the G.C.&S.F. Railway, and on a majority, if not all, of the other Class 1 railroads in the United States, were placed on a five (5) day, 40-hour week by virtue of a National Agreement reached between the representatives of the Carriers and the representatives of the involved employees on March 19, 1949. The Class 3 employees assigned to the Sweetwater Freight Warehouse were likewise placed on a 5-day week, Monday through Friday, effective September 1, 1949, and thereafter the Warehouse was operated only five days per week, Monday through Friday, until on or about February 9, 1951.

Effective on or about February 9, 1951, Carrier inaugurated, through the Santa Fe Trails Transportation Company, a truck service into and out of Sweetwater. Simultaneously Carrier instituted a pick-up and delivery service to its local patrons in Sweetwater on a daily basis, six days per week, Monday through Saturday. Prior to February 9, 1951, the regularly assigned warehouse force, the senior of whom is Claimant J. V. Baugh, loaded, unloaded, trucked and handled all of the less-than-carload freight into and out of the

While the claim of the Employees in the instant dispute does not clearly indicate whether it is their contention that Laborer No. 1 or Laborer No. 4, or both, were improperly assigned to perform Class III work in the freight warehouse on Saturdays, it is the Carrier's understanding that their claim involves only the assignment of Laborer No. 4. If this is correct, the time element involved in the claim actually extends only from October 9, 1952, the retroactive date of the claim, to February 1, 1953, when the position of Laborer No. 4 was abolished. Attention is also called to the fact that Laborer No. 4 normally worked at the freight warehouse from 8:00 A. M. to 10:30 A. M., during the above mentioned period, and the claim in behalf of Claimant Baugh should be restricted to 2'30" each Saturday. The Employees' claim is for "four (4) hours at rate of time and one-half". It is a well established principle, consistently recognized and adhered to by the Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

* * * * *

In conclusion, the Carrier respectfully asserts that the Employees' claim in the instant dispute is entirely without support under the Agreement rules in effect between the parties hereto and should be denied in its entirety.

All that is contained herein is either known or available to the Employees and their representatives.

OPINION OF BOARD: Carrier operates a Freight Warehouse at Sweetwater, Texas, and employs several Class 3 employees, the senior of whom is J. V. Baugh, the Claimant. Prior to September 1, 1949, the warehouse was operated six days per week. From September 1, 1949 to February 9, 1951, it was operated five days per week. On the latter date it was returned to a six-day operation due to the inauguration of truck service. Carrier used the occupant of Laborer Position No. 1, or the regular assigned relief man of that position, to do the work on Saturdays. Claimant contends that he should have been used.

Prior to February 9, 1951, the occupant of Laborer Position No. 1 was assigned Monday through Friday, and the rest days, Saturdays and Sundays were assigned as a part of regular relief assignment. The occupant of Laborer Position No. 1 handled mail and baggage at the passenger station until the departure of the early morning passenger trains and then reported at the freight warehouse and trucked freight. The regular relief man assigned to the Saturday work performed the same work at the passenger station and then performed janitor work at the freight station. Laborer Position No. 4, also a seven-day position, worked the early morning trains at the passenger station, assisted at the freight station when needed, and devoted the balance of his time to doing janitor work at the passenger station.

On February 9, 1951, pick-up and delivery trucking service was inaugurated which necessitated the freight station being open on Saturdays from 8:00 A. M. until 12:00 noon. The occupant of Laborer Position No. 1, in fact the regularly assigned relief man of that position on Saturday, was used to truck the freight on Saturday, aided by the regularly assigned relief man on the Saturday rest day of Laborer Position No. 4, until the latter position was abolished on February 1, 1953. Claimant retired from Carrier's service on March 31, 1954.

It is the contention of Claimant that the trucking of freight at the freight warehouse on Saturdays was work performed on unassigned rest days and that it was work which belonged to him under the unassigned rest-day rule which provides:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by

the senior qualified and available off-in-force-reduction employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee." Article VII, Section 1-e, Current Agreement.

It is not disputed that Claimant was the senior Class 3 employee at this point. Nor is it questioned that there were no furloughed employees available. The actual issue is whether or not the Saturdays in question were unassigned days. If the regularly assigned relief man to the Saturday rest day of Laborer Position No. 1 was entitled to perform the work, Claimant's position is untenable.

The Claimant, the occupant of Laborer Position No. 1 and the occupant of the regularly assigned relief position performing the Saturday rest-day work of Laborer Position No. 1, were all Class 3 employees, in the same seniority district, and carried on the same seniority roster. The record shows that prior to September 1, 1949, Laborer Position No. 1 was a seven-day position and the incumbent thereof trucked freight at the freight station on Saturdays after the departure of early morning trains. After September 1, 1949, and until February 9, 1951, the freight station was closed on Saturdays and no freight was trucked by any employee. When it was necessary to reopen the station on Saturdays, 8:00 A. M. to 12:00 noon, beginning February 9, 1951, the regular Saturday relief man to Labor Position No. 1 trucked freight at the freight station, and was so doing when this claim was made as of October 9, 1952. It is not contended here that the occupant of Laborer Position No. 1 was improperly used to truck freight at the warehouse on Monday through Friday. In fact, the General Chairman appears to concede that he could be so utilized. This being true, the relief man assigned to work on Saturday rest days of Position No. 1 can properly perform it on Saturdays as a part of his assignment. It is assigned work and Claimant has no right to it under Article VII, Section 1-e, Current Agreement. See Awards 5912, 5250, 5509, 6001, 6023, 6946. The Claimant, therefore, does not have a valid claim.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May, 1956.