

Award No. 9505

Docket No. CL-9223

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 Committee of the Brotherhood that:

(1) Carrier violated Clerks' Agreement when on January 14, 1956, it failed to utilize the service of check clerk B. T. Daniel and instead called and used N. T. Cook and L. A. Gunter, employees junior to Mr. Daniel, to perform duties on his position of check clerk on Saturday, January 14, 1956, one of his assigned rest days in the absence of an extra or unassigned employee.

(2) Carrier now be required to pay Mr. B. T. Daniel eight (8) hours at time and one-half of his regular assigned position of check clerk for Saturday, January 14, 1956, and each succeeding Saturday until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: (1) Mr. B. T. Daniel is regularly assigned to check clerk position T-1886, Freight Warehouse, Fort Worth, Texas, working assigned hours of 7:00 A. M. to 4:00 P. M. Monday through Friday, with Saturday and Sunday as rest days, having obtained same on a date subsequent to October 22, 1952, when in the exercise of his seniority, he displaced P. M. Cook, who was assigned to said position by Superintendent's bulletin No. 291 dated October 9, 1952, and 291-A, dated October 22, 1952 (Employees' Exhibits 1 and 1-A). The principal duties of this positions T-1886 are those of **checking freight** (emphasis ours) received in freight cars and trucks from other points on and off the Carrier's line of road.

(2) Mr. N. T. Cook is regularly assigned to Assistant Warehouse Foreman position (T-2224), working assigned hours 10:00 A. M. to 7:00 P. M., daily Monday through Friday with Saturday and Sunday as rest days, being assigned to said position when advertised by Superintendent's bulletin #235, November 19, 1951, and 335-A of November 29, 1951 (Employees' Exhibit 2 and 2-A).

(3) Mr. L. A. Gunter is regularly assigned to position of Warehouse Clerk, position T-1792, working assigned hours 6:30 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday as rest days, having obtained same on a date subsequent to October 9, 1952, when in the exercise of

The Board should never forget that Mr. G. E. Leighty, Chairman of the Employees' National Conference Committee, which persuaded the Board to recommend the 40-hour week agreement did so, in part by means of Mr. Leighty's testimony under oath, which included the following:

"The men don't want to work on those days. They want to be off on those days." (Folio page 272).

"All of our organizations have what we know as overtime hogs, but I have had petition after petition sent to me insisting that we go on a 40-hour work week without any loss in compensation, and also saying we don't want to work on Saturday and Sunday, we want to get out of that service." (Folio page 274).

"They are satisfied that if penalties are imposed for services on those days, substantial reductions can be made." (Folio page 275).

The claim, as stated, appears to contain a charge to the effect that an identical event occurs every Saturday. However, the situation varies from Saturday to Saturday. Neither the work force nor the work are exactly the same every Saturday. The Carrier does not see how any liability could be established for every subsequent Saturday, in any event, on the basis of the events which occurred on January 14, and January 21, 1956, even if those events could establish liability for those two dates.

Furthermore, the claim is for payment now of 8 hours pay, at the rate of time and one-half, for whatever Saturdays it is for.

If there had been something, for which the claimant had to be used, on those Saturdays, it would appear to be obvious that he could have done it on a two-hour call. He would not have had to stay there eight hours to do it. Frequently it happens that many of those who work there on Saturday work only four or five hours or even less. Some of the laborers are extra men, who may be used for a short hour day. There would be no possible justification for a claim for 8 hours pay for each Saturday, even if the agreement had been violated.

Also, the proper rate of pay for time not worked would be pro-rata, or straight time, not time and a half as claimed, even if there were liability for a call on those two Saturdays.

The very fact that the Brotherhood seeks to make this claim (a) for 8 hours, (b) at time and one-half, and (c) for every Saturday forever, shows that the Brotherhood's real purpose is to make us work more and more clerks on their rest days, in violation of the spirit of the 40-hour week agreement, simply in order to collect the penalty which they insisted they were not trying to collect.

(Exhibits Not Reproduced)

OPINION OF BOARD: Too many matters in the Record herein were presented by the Carrier for the first time after the case was submitted to

this Board. This is true, for instance, of the statements of L. A. Gunter and N. T. Cook, and it is true of Carrier's assertion that Claimant was not qualified to do clerical work in the warehouse office. It is likewise true of all of the material contained in Carrier's Exhibit No. 2, and true of all of the material contained in Carrier's Exhibit No. 3. These matters are all relevant, and some of them possibly of special significance, in the case.

In failing to present these matters for consideration during negotiations on the property the Carrier failed to meet its obligation, under the Railway Labor Act, both to the Parties themselves and to this Board. In meeting their general obligations under that Act both Parties to a dispute that is covered by the Act and that is of the type within the jurisdiction of this Board have a duty to make reasonable effort to provide all data and information relevant to the dispute and to negotiate for a resolution of the dispute in the light of that complete evidence. Moreover, in its consideration of any case which has reached this Board, the Board as an appellate tribunal is entitled to an adequate Record reflecting all evidence relevant to the case and reflecting reasonable assurance that said evidence has undergone the test of analysis and consideration by both Parties in the negotiation of the dispute on the property; certainly in the present case too much relevant matter has not been so tested, and accordingly this Board cannot be expected to render a decision on the merits at this time.

In addition to the fact that the Record in this case contains much matter which was not presented for consideration on the property, the evidence of Record (particularly the evidence which was considered on the property and which accordingly may be properly considered by this Board) does not adequately indicate what work was actually performed by the employees whom Claimant contends the Carrier improperly called to work instead of calling him. In this connection the Record is also deficient in not adequately indicating, if at all, what work is encompassed within the term "general warehouse work" (appearing in Bulletins 283 and 291). Responsibility for at least the latter deficiency can be charged to both Parties.

In view of all the above considerations, this case shall be remanded to the property for further development of the facts by both Parties and for further negotiations by the Parties in the light of all relevant evidence. In remanding the case, the Board does so without prejudice to the right of either party to resubmit it, with due diligence, to this Board for consideration in the light of all relevant evidence if that evidence and the Parties' negotiations in the light thereof have still failed to resolve the dispute.

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 case should be remanded to the property for further development of the facts and for further negotiations by the Parties in the light of all relevant evidence.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1960.

DISSENT TO AWARD NO. 9509, DOCKET NO. CL-9223

The principles regarding new evidence in this dispute being analogous to those in Award 9507, by the same Referee, the claim in this dispute should have been denied or dismissed.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen

ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 9505,
DOCKET CL-9223

My answer to Carrier Members' Dissent to Award No. 9507 applies equally as well here, consequently, there is no need for reiteration.

/s/ J. B. Haines
Labor Member

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 9505

DOCKET NO. CL-9223

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: *The Texas and Pacific Railway Company.*

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

In Award No. 9505 we held that:

"Too many matters in the Record herein were presented by the Carrier for the first time after the case was submitted to this Board. This is true, for instance, of the statements of L. A. Gunter and N. T. Cook, and it is true of Carrier's assertion that Claimant was not qualified to do clerical work in the warehouse office. It is likewise true of all of the material contained in Carrier's Exhibit No. 2, and true of all of the material contained in Carrier's Exhibit No. 3. These matters are all relevant, and some of them possibly of special significance, in the case."

and remanded the case to the property for further development of the facts by both parties and for further negotiation by the parties in the light of all relevant evidence, without prejudice to the right of either party to resubmit it, with due diligence, upon failure of the parties to resolve the dispute.

It was the intent of the Award that all matters referred to in the above quoted paragraph be considered by the parties in the development of the facts and in their further negotiations. The Division did not attempt to dictate to the parties how the facts should be further developed, or upon what basis a settlement should be made.

Referee Frank Elkouri, who sat with the Division, as a member, when Award No. 9505 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1961.