

Award No. 14646  
Docket No. CL-13664

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Nathan Engelstein, Referee

**PARTIES TO DISPUTE:**

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

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5265) that:

(a) The Carrier violated and continues to violate the current Clerks' Agreement at Denison, Texas, when effective January 1, 1962, it refused and continues to refuse to assign Position No. 4353 Crew Dispatcher, Position No. 4313 Ticket Clerk, Position No. 4312 Ticket Clerk, Position No. 9028 KFF Clerk and Relief Clerks assigned to relieve the incumbents of these positions, hours of assignment in conformity with Rule 45 of the Agreement effective January 1, 1962.

(b) And that S. C. Moad and/or his successor or successors on Position No. 4353 Crew Dispatcher be paid an additional hours' pay at the time and one-half rate for January 2, 1962, and each succeeding work day until the violation is corrected; J. L. Whitley and/or his successor or successors on position of Ticket Clerk No. 4313 be paid an additional one hour per day at the time and one-half rate for January 2, 1962, and each succeeding work day thereafter until the violation is corrected; F. D. Clarke and/or his successor or successors on Ticket Position No. 4312 be paid an additional one hour per day at the time and one-half rate for January 1, 1962, and each succeeding work day thereafter until the violation is corrected; S. E. Allen and/or his successor or successors on Position No. 9028 KFF Clerk be paid an additional three hours per day at the time and one-half rate for January 1, 1962, and each succeeding work day thereafter until the violation is corrected; E. E. Kennedy assigned to position of Relief Clerk be paid an additional three hours per day at the time and one-half rate for January 4 and 5, 1962, and for S. B. Goforth and/or his successor or successors on position of Relief Clerk be paid an additional one hour per day at the time and one-half rate for Monday, January 1, 1962, and each Monday, Thursday and Sunday thereafter that the occupant of this relief position is required to relieve the positions in the relief assignment in effect January 1, 1962, until date the violation is corrected.

**EMPLOYES' STATEMENT OF FACTS:** In addition to other positions covered by the Clerks' Agreement, the following positions were in effect at Denison, Texas, on January 1, 1962:

Position	Assigned Hours	Work Days	Rest Days
4353 Crew Disp.	4:00 A. M. to 12 noon	Tues-Sat	Sun & Mon
4313 Ticket Clerk	4:00 P. M. to 1:00 A. M.	Tues-Sat	Sun & Mon
4312 Ticket Clerk	4:00 A. M. to 12 noon	Sat-Wed	Thurs & Fri
9028 KFF Clerk	6:00 P. M. to 3:00 A. M.	Sat-Wed	Thurs & Fri
<b>Relief Clerk*</b>			
4353 Crew Disp.	4:00 A. M. to 12 noon	Monday	
9029 KFF Clerk	7:00 A. M. to 4:00 P. M.	Tuesday	
9029 KFF Clerk	7:00 A. M. to 4:00 P. M.	Wednesday	
9028 KFF Clerk	6:00 P. M. to 3:00 A. M.	Thursday	
9028 KFF Clerk	6:00 P. M. to 3:00 A. M.	Friday	
			Sat & Sun

\*Abolished January 6, 1962.

**Relief Clerk**

4312 Ticket Clerk	4:00 A. M. to 12 noon	Thursday	
4312 Ticket Clerk	4:00 A. M. to 12 noon	Friday	
9029 Yard Clerk	3:00 P. M. to 11:00 P. M.	Saturday	
4313 Ticket Clerk	4:00 P. M. to 1:00 A. M.	Sunday	
4313 Ticket Clerk	4:00 P. M. to 1:00 A. M.	Monday	
			Tues & Wed

On January 1, 1962, S. C. Moad was assigned to Position 4353, Crew Dispatcher; J. L. Whitley was assigned to Position 4313, Ticket Clerk; F. D. Clarke was assigned to Position 4312, Ticket Clerk; S. E. Allen was assigned to Position 9028, KFF Clerk; E. E. Kennedy was assigned to the first Relief Clerk position shown above, while S. B. Goforth was assigned to the second Relief Clerk position shown above.

From the above assignments it will be noted that Position 4353, Ticket Clerk, has an assignment which ends one hour after 12 Midnight, Position 4312, Ticket Clerk, has an assignment beginning one hour before 5:00 A. M.; Position 9028, KFF Clerk, has an assignment ending three hours after 12 Midnight, while the Relief Clerks have assignments corresponding with the positions on which they perform relief work on each day of their assignment.

The Agreement effective July 1, 1925 with revisions to December 1, 1951, copy of which has been furnished your Honorable Board, contained the following rules:

**"RULE 49. STARTING TIME**

Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without first giving the employe affected twenty-four (24) hours' notice."

**CARRIER'S STATEMENT OF FACTS:** The dispute in this case centers around the interpretation of Rule 45 of a new working agreement entered into between the parties on January 1, 1962, copies of which have been filed with the Third Division, National Railroad Adjustment Board.

Five positions are involved in this dispute, i.e., positions of Crew Dispatcher, Ticket Clerks (two positions), KFF Clerk, and Relief Clerks (two positions).

It is the position of the Organization that Rule 45 (b) of the controlling agreement required the Carrier to, effective January 1, 1962, change the hours of assignment of these positions to the extent that none of them would have a beginning or ending time between the hours of twelve (12:00) Midnight and five (5) A.M. It is the Carrier's position that since none of these five positions are three-shift positions, the provisions of Rule 45 (b) do not apply to them. It is this dispute, together with dispute between the parties as to whether claims filed on behalf of "and/or his successor or successors" meets the procedural requirements of Rule 30(a) of the controlling Agreement which the Third Division is now being asked to decide.

There has been no change in the hours of assignment of any of the positions in question—these positions now have the same hours of assignment that they had prior to the effective date of the new Agreement.

This claim has been handled in the usual manner on the property up to and including the undersigned highest operating officer of the Carrier authorized to handle time claims, and has been discussed in conference. Actual photocopy reproductions of the correspondence between the parties with respect to this claim are attached as Carrier's Exhibit A, Sheets 1 to 35, inclusive.

The controlling Agreement, No. DP-358, is on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute involves the interpretation of Rule 45, which went into effect on January 1, 1962, after lengthy negotiation. Rule 45 consists of the following two parts:

"(a) Where three (3) consecutive shifts are worked covering the twenty-four (24) hour period, no shift will have a starting after twelve (12) o'clock Midnight and before five (5) A.M.

(b) In no event shall the starting or ending time of any regular assignment be between the hours of twelve (12) Midnight and five (5) A.M. except by agreement."

Claimants, their positions, and their hours of work as of January 1, 1962, are listed as follows: S. C. Moad, Position 4353, Crew Dispatcher, 4:00 A.M. to 12:00 Noon; J. L. Whitley, Position 4313, Ticket Clerk, 4:00 P.M. to 1:00 A.M.; F. D. Clark, Position 4312, Ticket Clerk, 4:00 A.M. to 12:00 Noon; S. E. Allen, Position 9028, KFF Clerk, 6:00 P.M. to 3:00 A.M.; E. E. Kennedy, first Relief Clerk Position 4312, 4:00 A.M. to 12:00 Noon; S. B. Goforth, second Relief Clerk Position 4312, 4:00 A.M. to 12:00 Noon.

The Brotherhood contends that since these positions had either starting or ending times between the hours of 12:00 Midnight and 5:00 A. M., Carrier had an obligation under the new Rule which became effective January 1, 1962 to change the starting and ending times to conform to Rule 45 (b) or reach an agreement with Organization with respect to any exceptions. It states that since Carrier declined to take steps to conform to Rule 45 (b), Claimants are entitled to additional compensation until the violation is corrected.

Carrier raises the issue as to whether the claim filed on behalf of Claimants "and/or his successor or successors" meets the procedural requirement of Rule 30 (a) which is equivalent to Article V, Section 1 (a) of the National Agreement of August 1, 1954. On this issue we concur in Decision No. 19 of the National Disputes Committee which interpreted this Rule in these words: ". . . inasmuch as the term 'successors' as used in the claim refers to the successors of the named claimants as incumbent of certain positions, it adequately identifies additional claimants even though it does not specifically name them."

Carrier contends that Rule 45 (b) is applicable only in cases which involve one of three consecutive shift positions, as specified in Rule 45 (a). None of the Claimants have positions in this classification. In support of its interpretation, Carrier points out that the language of paragraph (a) of Rule 45 is identical to that of former Rule 50 of the Agreement; that paragraph (b) of Rule 45, representing a compromise between Carrier and Organization, came into being as an integral part of a rule having to do solely with three-shift operations, hence does not stand apart from paragraph (a) of Rule 45.

Carrier maintains that whereas Rule 45 is a special rule having reference to starting time of three-shift positions, Rule 19, which was also adopted on January 1, 1962, applies to regular positions insofar as starting times are concerned. Rule 19 provides that regular assignments will have a fixed starting time, but does not restrict the hours in which the starting times could be fixed. Since these positions do have a fixed starting time, Rule 19 was not violated.

Upon reviewing the wording of paragraphs (a) and (b) of Rule 45, we find that the language is clear and unambiguous on this issue; hence, there is no reason to delve into the motives of the parties at the time the Agreement came into existence. Paragraph (a) refers only to three consecutive shift positions. Paragraph (b), on the other hand, does not mention shifts, specifically refers to "any regular assignments", and by incorporating the words "ending time" further made it clear that this included an assignment not consecutively followed by another assignment, as in a consecutive three-shift position.

Rule 19 is concerned with the procedure for changing the starting times of regular assignments, not with what particular hours of the day are permissible for such starting times, and, therefore, is not applicable to the issue at dispute. We hold that Rule 45 (b) was violated, and the claim is sustained.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

#### **AWARD**

Claim sustained in accordance with above opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of July 1966.

#### **CARRIER MEMBERS' DISSENT TO AWARD 14646, DOCKET CL-13664 (Referee Engelstein)**

The Majority erroneously refused to consider the events leading to the final adoption of Rule 45 disclosing that it refers only to assignments in three shift operations.

The rule is not so clear and unambiguous as to preclude any other interpretation. For example, see Award 7314. Therefore, it was obligatory on the Majority in its search for the intent of the parties to consider the correspondence reflecting the negotiation of this rule.

Contrary to our sound decisions holding that an agreement must be interpreted so as to give effect to all its provisions, the Majority's interpretation of Rule 45 (b) nullifies Rule 45 (a).

The significance attached to the use of the words "ending time" in Rule 45 (b) is misplaced, as all assignments in three shift operations have ending times without regard to the fact they are followed by another assignment.

Award 14646 is in error and we dissent.

**W. M. Roberts  
G. L. Naylor  
C. H. Manoogian  
R. A. DeRossett  
H. K. Hagerman**

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'  
DISSENT TO AWARD 14646, DOCKET CL-13664**

To assert that Rule 45, reading:

“(a) Where three (3) consecutive shifts are worked covering the twenty-four (24) hour period, no shift will have a starting time after twelve (12) o'clock Midnight and before five (5) A.M.

(b) In no event shall the starting or ending time of any regular assignment be between the hours of twelve (12) Midnight and five (5) A.M. except by agreement.”

is not clear or that 45(b) nullifies 45(a) is to completely ignore the language of the Rules agreed to by the parties.

To arrive at any other conclusion than that in Award 14646 from the clear and unambiguous language of the rules quoted above would very definitely require that something other than the Agreement be considered and the Dissentor well knows that is only justified when there is ambiguity.

Award 14646 in Docket CL-13664 is quite correct in every respect and the Dissent fails, as did the record and Carrier's attempt, to show either ambiguity or error.

**D. E. Watkins**  
Labor Member  
8-8-66