

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES**
**GULF COAST LINES—INTERNATIONAL GREAT NORTHERN
RAILROAD COMPANY**

DISPUTE.—"Claim of Frank Scarborough, Line Desk Clerk at Kilgore, Texas, for compensation at the rate of time and one-half, on the actual minute basis, for all time in excess of eight (8) hours, exclusive of a meal period of not to exceed one hour, from the time required to first report for duty to the time of final release, during the period February 12, 1935, to April 28, 1935, both dates inclusive."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

On February 11, 1935, the second trick Yard Clerk was cut off. On February 12, the hours of the first Trick Yard Clerk were changed from 7:00 A. M. to 3:00 P. M., to 7:00 A. M., to 11:00 A. M., and from 3:00 P. M. to 7:00 P. M. This assignment continued until April 29.

Effective April 29, 1935, after complaint of Committee, the carrier changed the assignment of this position to eight consecutive hours exclusive of the meal period.

There is in evidence an agreement between the parties bearing effective date of December 1, 1926, and the complainant party cites the following rules thereof in support of claim:

"RULE 45

"DAY'S WORK, RULE 45. Except as otherwise provided in this Article, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

"RULE 46

"INTERMITTENT SERVICE, RULE 46. Where service is intermittent, eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employees filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours, computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

"Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the management and duly accredited representatives of the employees. For such excepted positions the foregoing paragraph shall not apply.

"This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

"Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employes cannot otherwise be utilized.

"Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours."

RULE 48

"LENGTH OF MEAL PERIOD.—RULE 48. Unless agreed to by a majority of employees in a department or subdivision thereof, the meal period shall not be less than thirty (30) minutes, nor more than one (1) hour."

RULE 54

"OVERTIME.—RULE 54. Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

Employees contend service on this position was not intermittent within the meaning of Rule 46.

Carrier contends service was intermittent and that Rule 46 is applicable.

Evidence shows that the position was under the supervision of Yardmaster and subject to instructions from both Yardmaster and Agent and that during period of release, such work as required immediate attention was taken care of by other employees and work not requiring immediate attention was held over until return of employee at 3:00 P. M.

It is found that during period covered by this claim, viz., February 12th to April 28, 1935, both dates inclusive, the work on this position was not intermittent as contemplated by Rule 46 and the assignment was properly changed effective April 29, 1935.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 19th day of February 1936.