

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY COMPANY

(Guy A. Thompson, Trustee)

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

"(a) Effective November 1, 1940 the correct rate of pay for the position of Transfer Clerk at Palestine, Texas, is \$6.14 per day with an annual assignment of 306 days, also

"(b) Claim that the Transfer Clerk be paid an additional day's pay at the rate of time and one-half for each Sunday and holiday worked from November 1, 1940 until correct rate of pay and assignment is made effective."

There is in evidence an agreement between the parties bearing effective date of November 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: "The Transfer Clerk at Palestine, Texas, is assigned on a 365 day annual basis and is paid \$5.15 per day.

"The duties of the position are to check freight transferred at warehouse and on trucks, check in and outbound freight from cars and trucks and to make manifests of waybills.

"The position was last established in April 1940 with an annual assignment of 306 days and continued on that assignment until June 15, 1940 when a 365 day annual assignment was put into effect in order to restore the former monthly earnings of the position.

"The Transfer Clerk is assigned to work from 2:00 A. M. to 10:00 A. M., and the Warehouse Foreman is assigned 7:00 A. M. to 4:00 P. M."

POSITION OF EMPLOYEES: "On July 11, 1939 the position of Transfer Clerk was abolished. At that time the position had an annual assignment of 365 days.

"As to the time claimed for each Sunday and holiday worked November 1, 1940, until the assignments are changed: It is the contention of the Carrier that no date was set in the letter addressed to Mr. Dyer on October 13, referred to above, as to when the changes would become effective, and, therefore, employees are not entitled to extra compensation for work on Sundays and holidays until such time as an agreement can be reached between the representatives of the Carrier and the Organization as to the effective date of the change in the assignment, as, if and when made.

"While the General Chairman of the Organization had notified the Carrier that the Organization was making the claim for Sundays and holidays worked since November 1, 1940, no discussion was had concerning the same at the conference on May 19 and 20, 1941, referred to above, the only matter having been discussed being with respect to the positions which the Organization proposed to change from a 365 day annual assignment to a 306 day annual assignment.

"It is the contention of the Carrier that the duties performed by the position involved in this case are of such nature that it is necessary for the same to remain assigned so as to include Sundays and holidays and it is the further contention of the Carrier that your Honorable Board should dismiss this case for lack of jurisdiction inasmuch as the determination of positions assigned to Sunday and holiday work necessary to the continuous operation of the Carrier is a subject for negotiation between the parties by agreement."

OPINION OF BOARD: In so far as the interpretation of the agreement is concerned this case involves exactly the same question as was considered in Docket No. CL-1679, Award No. 1614. We there held the letter of October 13, 1940 to be a part of the agreement effective November 1, 1940, and that it required the carrier as of November 1, 1940 to reduce all 365 day assignments not necessary to the continuous operation of the carrier to 306 day assignments without a reduction in the total pay by the employees affected.

The position here involved is the 365 day assigned position of Transfer Clerk at Palestine, Texas. In view of the construction which we placed in Docket CL-1679, Award 1614, on the phrase "not necessary to the continuous operation of the carrier" we must hold that the assignment covered by this case should have been reduced, effective November 1, 1940, to a 306 day annual assignment without any reduction of the earnings of the man employed in such position.

For the reasons expressed in Docket No. CL-1679, Award 1614, we hold, however, that such employee is not entitled to time and one-half for Sundays and holidays worked since November 1, 1940, but only to the pro rata rate.

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 employee involved in this dispute are respectively carrier and employee 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 of October 13, 1940 is supplemental to the current agreement; that it has the same effective date, viz., November 1, 1940 and applies to the position involved in this dispute, it having a 365 day assignment and not being "necessary to the continuous operation of the carrier."

AWARD

Claim (a) sustained; claim (b) sustained to this extent—that the employe be paid an additional day's pay at the pro rata rate established under claim (a) for each Sunday and holiday worked from November 1, 1940 until a correct assignment in his case shall have been made effective, less amounts actually received for regularly assigned working hours on such days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of November, 1941.