

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 EMPLOYEES**

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 Chief Clerk, San Antonio Freight Station is \$8.24 per day with an annual assignment of 306 days, also

"(b) Claim that the Chief Clerk be paid an additional day's pay at the rate of time and one-half for each Sunday and holiday from November 1, 1940 until proper 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 position of Chief Clerk at the San Antonio, Texas freight station is assigned on a 365 day annual basis and paid \$210.00 per month.

"The duties of the position are to supervise the office force and handle the general correspondence for the agent.

"There are no duties assigned the position that are necessary to the continuous operation of the carrier.

"The San Antonio Freight office is closed on Sundays and holidays but on those days the Chief Clerk is required to be on duty from 8:00 A. M. to 12 Noon."

POSITION OF EMPLOYEES: "During our 1940 rules negotiations we endeavored to reduce all 365 day annual assignments to 306 day annual assignments without any reduction in the earnings of the position. We were unable to reach an agreement to that effect, however, the carrier did

"Should the above position be changed from a monthly to a daily rate, the change would be made as provided for in the following rule contained in the current Agreement with the Clerks' Organization:

'Rule 48. Basis of Pay

'Employees covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.'

"The Chief Clerk to the Freight Agent at San Antonio comes under Group (1) and should his monthly rate be reduced to a daily rate under the above quoted rule, the conversion would not operate to establish a rate of pay either more or less favorable than is now in effect.

"There is quoted in the Carrier's Statement of Facts Rules 37 and 43 as contained in the current Agreement, and, as stated, the position is excepted from the application of those rules, as provided for in Section (c), of Rule 7, and should the employee's rate have been converted to a daily rate and his assignment changed to 306 days per annum, as contended for by the Organization, he would not be entitled to any claim for being called on Sundays or holidays or for any time worked in excess of eight hours to constitute a day, as rules covering such payment are not applicable to the position. From the above, it will readily be noted that to change the employee's rate from a monthly to a daily basis would be of no advantage to the employee and would not result in an increase in compensation.

"The Agreement effective November 1, 1940, contains rules which govern the hours of service and working conditions of employees coming under that Agreement and does not cover rates of pay. Rates of pay were established under a separate agreement with the Organization and became effective July 1, 1929. The position of Chief Clerk, San Antonio Freight Station, was not included in that agreement, however, after the Agreement dated April 1, 1939, became effective a list was compiled of monthly rated employees who had been carried on the excepted list showing their monthly rates of pay, a copy of which was furnished to the General Chairman of the Organization.

"It is the contention of the Carrier that from the evidence submitted your Honorable Board should dismiss this case for lack of jurisdiction inasmuch as it is the understanding of the Carrier that the employees are basing their position in this case on letter of understanding dated October 13, 1940, which has been heretofore quoted and which bears no effective date.

"It is also the position of the Carrier that the claim for time worked on Sundays and holidays, as made by the representatives of the employees, should be declined in case your Honorable Board should assume jurisdiction."

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 received by the employees affected.

The position here involved is the 365 day assigned position of Chief Clerk at the San Antonio, Texas, Freight Station. 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 CL-1679, Award 1614, we hold, however, that such employe 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 employe involved in this dispute are respectively carrier and employe 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.