

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 General Clerk R. R. Walker, Houston Freight Station be paid a three hour call on February 22, 1941 because of other employes being called and performing duties regularly assigned to Mr. Walker."

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

EMPLOYEES' STATEMENT OF FACTS: "Mr. R. R. Walker is assigned to the position of General Clerk at the Houston Freight Station.

"Mr. Walker's regular assigned duties include the making of manifests and 200 Jt. report of cars loaded.

"Mr. Walker was not called or permitted to work on February 22, 1941, and the above work was performed by Bill Clerks who were paid at the rate of time and one-half."

POSITION OF EMPLOYEES: "The employes quote the following rule in support of this claim:

'Rule 45. Authorizing Overtime

'(a) No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advanced authority is not obtainable and employes will be furnished suitable forms on which to report overtime worked.

'(b) In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays.'

truck manifest and the Joint 200 Report on February 22, 1941, as well as all other work of the Billing Department that was performed on that date. He makes the truck manifest and 200 Jt. Report each Sunday, as the General Clerk is not assigned and as he is not assigned on holidays, the above mentioned work was performed by the Chief Bill Clerk, the same as he does on Sunday.

"It is the contention of the Carrier that its failure to call and require General Clerk R. R. Walker to work February 22, 1941, is not a violation of the Agreement with the Clerks' Organization and your Honorable Board is respectfully petitioned to so rule."

OPINION OF BOARD: There are two questions involved here. First, the interpretation of Rule 45 (b). Second, whether General Clerk R. R. Walker was "regularly assigned" to the class of work which, on February 22, 1941, was performed by other employees. Rule 45 (b) reads as follows:

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

The carrier contends that the purpose of the rule "was to prevent the carrier from calling employees from other departments to work overtime or extra time on Sundays and holidays in preference to employees regularly assigned in the department in which the Sunday or holiday work is required." As an illustration the carrier says that it would be a violation to call an employee in the Rate Department to do work in the Billing Department without giving the preference called for by the rule. We find nothing in the rule to justify the restricted interpretation claimed by the carrier. The rule has reference to the particular class of work done by the individual employee, not to the class of work done in a particular department, and requires the carrier to give preference in working overtime or in working extra time on Sundays and holidays to the employee regularly assigned to such work. The interpretation claimed by the carrier has never been suggested in any of the awards applying rules similar to this one. Awards 60, 68, 420, 572. In Award 420 the language is construed exactly as we have construed it here. In view of the fact that the parties adopted the rule after that award was rendered, we must hold that they did so in the light of the interpretation which had been placed upon it.

The evidence in the record on the question of fact might have been fuller. From the carrier's own statements, however, we find that the rendering of all truck manifests and the compiling of the 200 Jt. Report was work done by the claimant in the Billing Department at the Houston Freight Station under the direction of the Chief Bill Clerk, and that, on account of the claimant not being assigned to perform services on Sundays and holidays, the Chief Bill Clerk performed this work on the day in question.

We are satisfied that the evidence establishes that this was a class of work regularly assigned to the claimant and that in the performance of it on February 22nd he should have been given the preference. Awards 68 and 420 show a state of facts similar to those now before us. The parties when they adopted the present rule must have done so with full knowledge of those decisions.

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 carrier violated Rule No. 45 (b) as contended by the claimant.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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