

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, 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) The carrier is violating the Clerks' Agreement at Mineola, Texas by refusing to assign hours of service in accordance with Rules 40 and 42 of the current agreement,—also

(b) Claim that employes involved in or affected by such agreement violation be paid at the rate of time and one-half for all time in excess of eight consecutive hours computed from the time first required to report for duty to time of final release,—also

(c) That additional payment be made at the rate of time and one-half for all time outside of the hours specified in Paragraph (a) of Rule 42."

JOINT STATEMENT OF FACTS: "The carrier maintains continuous service at Mineola, Texas with the following station force and assigned hours:

Agent	8:00 A. M. to 5:00 P. M.
Telegrapher	7:00 A. M. to 4:00 P. M.
Trucker	12:00 Midnight to 8:00 A. M.
Clerk	3:00 A. M. to 12:00 Noon
Porter	7:00 A. M. to 4:00 P. M.
Clerk	4:00 P. M. to 1:00 A. M.

"The first two positions listed above are not covered by the Clerks' Agreement. The last four positions are covered by the Clerks' Agreement."

POSITION OF EMPLOYES: "The following rules of the current Clerks' Agreement are quoted in support of the employes' position:

'Rule 42. Starting Time of Assignments

'(a) All assignments will have a fixed starting time. Where work is performed covering the 24 hour period, the starting time of each shift will be between the hours of five (5) and eight (8) A. M., two (2) and four (4) P. M., and ten (10) P. M. and midnight.

"On November 25, 1940 we wrote the Assistant General Manager as shown in Exhibit A, pointing out to him that the positions at Mineola had improperly assigned hours, and requested that they be assigned in accordance with Rule 42, Paragraph (a) and Rule 40, and further claimed payment because of the improper assignments.

"The carrier was traced for a reply on December 28, 1940 and February 5, 1941 and the claim was discussed in conference on January 7, 1941 and the only response we were able to obtain from the carrier was that they 'understood that there would be no change in the assignments in effect at Mineola at the time the Agreement was made.' (See Exhibit B.)

"We do not know how the carrier arrived at their understanding as there is certainly no understanding to that effect between the parties to the Agreement. The rules here involved are plain and easily understood and there certainly is no room or reason for the carrier misunderstanding them. We are only asking that the rules be applied as agreed upon and written into the agreement.

"We have shown that there is continuous service at Mineola, and we have shown that the assigned hours are in violation of the Agreement. Therefore we ask that your Honorable Board sustain our claim."

POSITION OF CARRIER: "Rule 42, as contained in the current schedule with the Brotherhood of Railway Clerks, reads as follows:

'(a) All assignments will have a fixed starting time. Where work is performed covering the 24 hour period, the starting time of each shift will be between the hours of five (5) and eight (8) A. M., two (2) and four P. M., and ten (10) P. M. and midnight.

'(b) In no event may the starting or ending time of any assignment be between the hours of twelve (12) midnight and five (5) A. M., except by agreement.

'(c) Where only one employe covered by this agreement is employed such employe may be assigned to begin and end his tour of duty at any time.'

"At the time this rule was written, it was verbally agreed between the Management and the General Chairman of the Brotherhood of Railway Clerks that any positions with starting or ending time between 12:00 midnight and 5:00 A. M. in effect at the time the Agreement was signed would not be disturbed, but that in the future positions which it may be necessary to assign with starting or ending time between 12:00 midnight and 5:00 A. M. would be assigned by agreement between the Management and the Organization.

"The two positions involved in this case are Ticket Clerks who sell tickets at Mineola which makes it necessary for them to be assigned as indicated in the Joint Statement of Facts. It will be noted that the positions the two clerks hold do not cover the 24-hour period, however, by including the Agent, Telegrapher, Trucker and Porter, 24 hour continuous service is maintained at the station.

"Mineola is a joint station serving the I.-G. N., Texas & Pacific and M.-K.-T. Railroads, the same being operated by the I.-G. N., and the employes carried on the I.-G. N. payrolls.

"It is the contention of the Carrier, in view of the understanding had with the representatives of the employes, as heretofore indicated, and the further fact that the clerks do not cover the 24-hour period, that the contention of the employes should not be sustained."

OPINION OF BOARD: This case, in all essential features is identical with the dispute in Docket CL-1665 just disposed of by Award 1641.

The parties stipulate that:

"The carrier maintains continuous service at Mineola, Texas with the following station force and assigned hours:

Agent	8:00 A. M. to 5:00 P. M.
Telegrapher	7:00 A. M. to 4:00 P. M.
Trucker	12:00 Midnight to 8:00 A. M.
Clerk	3:00 A. M. to 12:00 Noon
Porter	7:00 A. M. to 4:00 P. M.
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"The first two positions listed above are not covered by the Clerks' Agreement. The last four positions are covered by the Clerks' Agreement."

What was said in the Opinion in Award 1641 may be said with equal force here.

The Division is of the opinion that, under the agreed facts, the Carrier violated Rule 42 as contended by the Organization.

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 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 carrier violated Rule 42.

AWARD

Claim sustained as for violation of Rule 42; denied as for alleged violation of Rule 40.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.