

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, 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 violated the Clerks' Agreement from November 1, 1940 to November 29, 1940 by assigning one Line Desk Clerk and two Yard Clerks in the Corpus Christi Yard Office a meal period of one hour. Also

(b) Claim that the Line Desk Clerk and two Yard Clerks be paid one hour's overtime each day from November 1, 1940 to November 29, 1940 both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: On November 1, 1940 we had the following Clerical positions in the Corpus Christi Yard Office that were assigned and worked the hours shown below:

Line Desk Clerk	7:00 A. M. to 12:00 Noon
	1:00 P. M. to 4:00 P. M.
Yard Clerk	2:00 P. M. to 8:00 P. M.
	9:00 P. M. to 11:00 P. M.
Line Desk Clerk	11:00 P. M. to 7:00 A. M.
Yard Clerk	5:30 A. M. to 12:00 Noon
	1:00 P. M. to 2:30 P. M.

On November 25, 1940 claim was filed because of a meal period being assigned these positions, and on November 30, 1940 the carrier changed the assigned hours so that the positions now work 8 consecutive hours without a meal period.

On December 9, 1940 and again on April 4, 1941, after the meal periods had been eliminated and hours assigned in accordance with Rule 40 the carrier declined the claim.

POSITION OF EMPLOYES: Rules 40 and 37 of the current agreement became effective November 1, 1940 and read as follows:

"Rule 40. Continuous Work Without Meal Period.

"For regular operations requiring continuous service, eight (8) consecutive hours without meal period shall be assigned as constituting a day's work, in which case not less than twenty (20) minutes

The Carrier has no record of any protest, complaint or claim as to the assignment of a meal period to the above mentioned employees as indicated until receipt of a letter from Mr. J. L. Dyer, General Chairman of Clerks' Organization dated November 25, 1940, stating that his investigation disclosed the employees referred to above had an assigned meal period of one hour, which is in violation of Rule 40, filing claim for one hour's overtime at the rate of time and one-half for each day the violation exists, which the Carrier understands is from the date of his letter November 25, 1940 referred to above. On November 30, 1940, or five days after receipt of General Chairman's letter, the assigned hours of the employees were changed as follows:

Line Desk Clerk	7:00 A. M.— 3:00 P. M.
Yard Clerk	2:00 P. M.—10:00 P. M.
Line Desk Clerk	11:00 P. M.— 7:00 A. M.
Yard Clerk	5:30 A. M.— 1:30 P. M.

POSITION OF CARRIER: The circumstances connected with this case are fully outlined in the Carrier's Statement of Facts and it is the contention of the Carrier that inasmuch as the request of the General Chairman was complied with promptly after receipt of his complaint that the claim should be denied.

OPINION OF BOARD: The question before us for resolution in this case involves the interpretation or application of Rule 40 of the current agreement which became effective November 1, 1940, and reads:

"Rule 40. Continuous Work Without Meal Period. For regular operations requiring continuous service, eight (8) consecutive hours without meal period shall be assigned as constituting a day's work, in which case not less than twenty (20) minutes shall be allowed in which to eat without deduction in pay. The twenty (20) minutes shall be allowed between the end of the fourth and sixth hour after starting time with due regard to the requirements of the position."

It is the position of the Carrier that there are two Line Desk clerical positions. One such position was assigned on duty 7:00 A. M. and off duty 4:00 P. M. The second such position was assigned on duty 11:00 P. M. and off duty 7:00 A. M. A spread of seven hours, 4:00 P. M. to 11:00 P. M., existed, during which period there was no Line Desk Clerk on duty, there being no need for one. Line Desk clerical positions are essentially office positions.

There are two Yard Clerk positions. One such position was assigned on duty 2:00 P. M. and off duty 11:00 P. M. The second such position was assigned on duty 5:30 A. M. and off duty 2:30 P. M. It will be noted that a spread of six hours and thirty minutes, 11:00 P. M. to 5:30 A. M., existed, during which period there was no Yard Clerk on duty, there being no necessity therefor. During the period from 2:00 P. M. to 2:30 P. M., both Yard Clerks were on duty. The predominating duties assigned Yard Clerks are those of checking of cars loaded and empty on hand in the yard and checking of cars loaded and empty arriving and departing in trains, which is outside work. It is true they also perform some office work incidental to their duties of checking, but, as before stated, Yard Clerk work is predominantly outside checking work.

It is the position of the Employees that the fact that the positions on the first and third tricks were classified as Line Desk Clerks while the position on the second trick was classified as a Yard Clerk does not alter the application of the rule for the reason that the character of the service performed is similar or interchangeable.

In Award 1590, Docket CL-1620 it was held that Rule 40 did not apply to the position of Chief Yard Clerk as such position does not cover a continuous 24 hour period. In that award it was said, "that all positions will have an assigned meal period except those whose regular operations need to be performed in rotation throughout the 24 hour period."

It is not disputed that at Corpus Christi there is a continuous service performed by the Line Desk Clerks and the Yard Clerks. During the period involved one Line Desk Clerk began work at 7:00 A. M. and continued until 4:00 P. M. with a meal period of one hour beginning at 12:00 Noon; a Yard Clerk began work at 2:00 P. M. and continued until 11:00 P. M. with a meal period of one hour beginning at 8:00 P. M.; a Line Desk Clerk began work at 11:00 P. M. and continued until 7:00 A. M. while a Yard Clerk began work at 5:30 A. M. and continued until 2:30 P. M. with a meal period of one hour beginning at 12:00 Noon. It is not disputed that the services performed by Line Desk Clerks and Yard Clerks are interchangeable.

Under the interpretation we gave Rule 40 in Award 1590, the Yard Clerk whose assigned hours of service, between November 1 and 30, 1940, were from 2:00 to 11:00 P. M. and who worked in continuous service with the Line Desk Clerks on the first and third tricks, 7:00 A. M. to 4:00 P. M., and 11:00 P. M. to 7:00 A. M., respectively, came within the provisions of Rule 40, and should have been assigned accordingly. This also applies to the first trick Line Desk Clerk, hours 7:00 A. M. to 4:00 P. M. It is clearly shown that these were positions "whose regular operations need to be performed in rotation throughout the twenty-four-hour period." Rule 41 provides no exception to positions so assigned in rotation with positions on each of the other shifts, thereby completing continuous service around the clock for the twenty-four-hour period. The fact that the positions on the first and third tricks were classified as line desk clerks, whereas the position on the second trick, the one in question, was classified as a yard clerk, does not alter the application of Rule 40. This rule has to do with the character of service performed, not the title the Carrier may elect to give positions.

Under the interpretation we gave Rules 40 and 41 in Award 1590 we find that the fourth and odd position of yard clerk, whose assigned hours of service were, for the period involved, 5:30 A. M. to 2:30 P. M. and who did not work in rotation with other positions throughout the twenty-four-hour period, was correctly assigned under Rule 41.

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 employes involved in this dispute are respectively carrier and employes 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 claim is sustained as stated in the Opinion.

AWARD

Claim (a and b) sustained as to the two positions with assigned hours 7:00 A. M. to 4:00 P. M., and 2:00 to 11:00 P. M. respectively; claim denied as to the position with assigned hours 5:30 A. M. to 2:30 P. M.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1942.