

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John W. Yeager, 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 hours assigned the station force at Taylor, Texas are in violation of the Clerks' Agreement. Also
- (b) Claim that employees be paid at the rate of time and one-half for all time in excess of eight consecutive hours computed continuously from the time first required to report for duty. Also
- (c) Claim that employees be paid additional at the rate of time and one-half for all time required to report for duty in advance of the hours specified in Rule 42.

EMPLOYEES' STATEMENT OF FACTS: There is continuous service at Taylor where we have the following station force with assigned hours as listed below:

Cashier 8:00 A. M. to 5:00 P. M. 1 hr. meal period.
Chief Yard Clerk 8:00 A. M. to 4:00 P. M. No meal period.
Chief Clerk 9:00 A. M. to 6:00 P. M. 1 hr. meal period.
Check Clerk 11:00 A. M. to 7:00 P. M. No meal period.
Clerk 11:00 A. M. to 8:00 P. M. 1 hr. meal period.
Trucker 12:00 Noon to 8:00 P. M. No meal period.
Yard Clerk 3:30 P. M. to 12:00 M. N. No meal period.
Line Desk Clerk 11:30 P. M. to 7:30 A. M. No meal period.
Trucker 5:00 A. M. to 2:00 P. M. 1 hr. meal period.
Trucker 11:30 P. M. to 8:00 A. M. 30 min. meal period.
Caller 9:30 P. M. to 6:30 A. M. 1 hr. meal period.

Work is performed covering the entire twenty-four hour period of the day with continuous service at all hours.

POSITION OF EMPLOYEES: The employees quote the following rules from our current agreement in support of this claim:

The facts speak for themselves. The positions and assigned hours prove conclusively that "work is performed covering the twenty-four hours period" therefore we ask your Honorable Board to sustain our claim.

CARRIER'S STATEMENT OF FACTS: Station and yard forces at Taylor are assigned as follows:

| Position | FREIGHT OFFICE FORCE Assignment |
|-------------------|---|
| General Clerk | 9:00 A.M. to 6:00 P.M.—1 Hr. meal period— 1:00 P.M. to 2:00 P.M. |
| Cashier | 8:00 A.M. to 5:00 P.M.—1 Hr. meal period—12:00 N. to 1:00 P.M. |
| General Clerk | 11:00 A.M. to 8:00 P.M.—1 Hr. meal period— 3:00 P.M. to 4:00 P.M. |
| Check Clerk | 11:00 A.M. to 7:00 P.M.—Straight assignment. |
| Night Check Clerk | 11:59 P.M. to 7:59 A.M.—Straight assignment. |
| Trucker No. 1 | 11:30 P.M. to 8:00 A.M.—30 min. meal period— 3:30 A.M. to 4:00 A.M. |
| Trucker No. 2 | 11:00 A.M. to 7:00 P.M.—Straight assignment. |
| Trucker No. 3 | 5:00 A.M. to 2:00 P.M.—1 Hr. meal period—10:15 A.M. to 11:15 A.M. |

| YARD OFFICE FORCE |
|---|
| Chief Yard Clerk |
| 8:00 A.M. to 4:30 P.M.—30 min. meal period—12:00 N. to 12:30 P.M. |
| Yard Clerk |
| 3:30 P.M. to 12:00 M.N.—30 min. meal period— 7:30 P.M. to 8:00 P.M. |

POSITION OF CARRIER: There has been no claim presented in this case by any employe at Taylor. The claim as made by the General Chairman of the Clerks' Organization is so indefinite the Carrier is unable to determine just what positions are involved, however, Rule 40 and Paragraph (a) of Rule 42, of Clerks' Agreement, which the General Chairman claims is being violated, are quoted below:

"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."

"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."

It is the contention of the Carrier that the rules quoted above are being complied with, and, therefore, claim that station forces at Taylor are improperly assigned is without merit.

OPINION OF BOARD: All other matters having been voluntarily withdrawn by the Claimant, this case is presented on Item (c) of the claim. The

only matter now presented is the interpretation of Rule 42 and the application of overtime or penalty rates of pay if it be determined that the rule has been violated as claimed.

At Taylor, Texas, and operating out of the same building, the Carrier maintains two forces of employees, namely, a Freight Office force and a Yard Office force. The following is a list of the positions of the Freight Office force with the listed regular working time for each position:

| | |
|-------------------|-------------------------|
| Chief Clerk | 9:00 A.M. to 6:00 P.M. |
| Cashier | 8:00 A.M. to 5:00 P.M. |
| General Clerk | 11:00 A.M. to 8:00 P.M. |
| Check Clerk | 11:00 A.M. to 7:00 P.M. |
| Night Check Clerk | 11:59 P.M. to 7:59 A.M. |
| Trucker No. 1 | 11:30 P.M. to 8:00 A.M. |
| Trucker No. 2 | 12:00 Noon to 8:00 P.M. |
| Trucker No. 3 | 5:00 A.M. to 2:00 P.M. |

The Claimant asserts that, at and prior to the time the claim was made, as a part of this force there was also a caller whose hours were from 9:30 P. M. to 6:30 A. M. This the Carrier denies.

The Yard Office force with hours of service is as follows:

| | |
|------------------|-----------------------------|
| Chief Yard Clerk | 8:30 A.M. to 4:30 P.M. |
| Yard Clerk | 3:30 P.M. to 12:00 Midnight |

It is the contention of the Claimant that all of these positions must be grouped together as a single service unit and that in so grouping them work is performed at Taylor, Texas, covering the 24-hour period within the meaning of Rule 42 (a); and that, therefore, the provisions of the said rule pertaining to starting times is being violated by the Carrier.

Rule 42 (a) is as follows:

"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."

The Carrier insists that they are separate service units and, therefore, work is not performed covering the 24-hour period within the meaning of the rule. It contends further substantially that the rule contemplates shifts, not necessarily of the same size, covering the 24-hour period, performing similar work. As to this contention, we need only say that the question has been previously decided adversely to the Carrier's position in other cases, notably in Award 1641, and we observe no compelling reason for a departure from the pronouncements there made.

If then the service at this point may be considered properly as one service unit, the contention of the Claimant should be sustained. If it may not, the Carrier should prevail. A determination of this question is clearly dependent upon the facts.

Among the facts in the Carrier's Rebuttal, page 1, we find the following:

"While there are employees on duty at all hours during the 24-hour period at Taylor, there are no employees performing the same class of work on duty at that point covering the 24-hour period."

Again in the Statement of Facts in Employees' Answer to Carrier's Statement of November 1, 1941, page 3, we find the following:

"The station and yard employees at Taylor are all under the supervision of the Agent; all located in the same office and all perform general station and yard work."

It appears as a matter of fact that there was an overlapping of the functioning of the Freight Office force and of the Yard Office force and that the two together, without any interval of interruption, carried on the work at this station for the full 24 hours of the day, and that the claim has been sustained.

This finding affects 5 positions, namely, Chief Clerk, Check Clerk, Clerk, 1 Trucker and Caller. For these a basis of computation of overtime or penalty pay is required.

As to this matter, since the violations were only technical and from them no actual injury flowed, and further, since the dispute is meritorious from the opposing viewpoints, we think a computation in accordance with the spirit and as nearly possible to the letter of Rules 37 and 43 should be imposed, rather than the drastic one sought by the Claimant.

With this as a basis we conclude as follows: As to Chief Clerk, it is considered that the tour of duty began at 8:00 A. M. with 1 hour overtime at the end; Check Clerk, 3 hours overtime at the end; Clerk, 3 hours overtime at the end; Trucker, 2 hours before regular tour began; Caller, one-half hour before regular tour began.

The award in accordance with these conclusions should be made effective for violation of Rule 42 (a).

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 Rule 42 (a) of Clerks' Agreement has been violated as claimed.

AWARD

Claim that Rule 42 (a) of Clerks' Agreement is sustained as of the date of the commencement of violation by the Carrier, as to the positions of Chief Clerk, Check Clerk, Clerk, Trucker, and Caller, respectively.

For each date of violation for Chief Clerk position there shall be 1 hour overtime at the end of tour of duty; Check Clerk 3 hours at the end; Clerk 3 hours at the end; Trucker 2 hours before regular tour began; and Caller ½ hour before regular tour began.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.