

**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**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS**

(Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of Rule 46 when it assigned Porter C. H. Brown to intermittent basis with hours of assignment 7:00 A. M. to 11:00 A. M., and 2:00 P. M. to 6:00 P. M., effective February 24, 1942.

(2) That the position of Porter occupied by C. H. Brown in the Division Superintendent's Office, Pine Bluff, Arkansas, shall be assigned eight (8) consecutive hours work exclusive of the meal period.

(3) That Porter C. H. Brown to be compensated at the rate of time and one-half on the actual minute basis for all time in excess of eight (8) hours, exclusive of a meal period of not to exceed one hour, from the time required to first report for duty, to the time of final release, retroactive to February 24, 1942, until corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier by arbitrary action on February 22, 1942, notified Porter C. H. Brown in writing, that effective Tuesday, February 24, 1942, he would be assigned on intermittent basis under the provisions of Rule 46 of Current Agreement with Clerical employees working 7:00 A. M. to 11:00 A. M., and 2:00 P. M. to 6:00 P. M., six day assignment.

The duties performed by and assigned to Porter Brown are as follows: Sweeping out Dispatcher's office, Telegrapher's office and Superintendent's private office first thing each morning, dusting in all offices and wiping off each desk. Bring up the morning mail for distribution. Look after the toilets to see that they are working and kept in good order, placing toilet paper in the toilets, looking after the steam for heating the building, getting ice and fixing ice water. Cleaning five different wash basins, putting out clean towels and soap, wash drinking fountains, washing windows, sweep and mop in toilets and cleaning toilet bowls. Getting the mail ready for south bound train 5, bringing the mail up and delivering mail and packages to different offices. Sweeping the porch, elevator and steps of the building. Washing cuspidors in all the offices and toilet. Empty waste paper baskets, taking it out to the dump where it is burned. When express arrives, deliver it to different offices. Take files and boxes to record room and bring file boxes back. Getting mail ready for North bound train No. 6 and wrapping packages. Putting mail on the train. Clean mimeograph and ditto machines. Run

POSITION OF CARRIER: It is the position of the Carrier that the assignment of 7:00 A. M. to 11:00 A. M., and 2:00 P. M. to 6:00 P. M. is clearly authorized under the provisions of Rule 46, quoted in the Carrier's Statement of Facts; and in order to meet the Carrier's service requirements, it is necessary that the employe assigned to the position classified as janitor report for duty one hour prior to 8:00 A. M. and remain on duty one hour after 5:00 P. M. During the period 11:00 A. M. to 2:00 P. M. there is no janitor service to be performed, and the service of the employe assigned to the position in question cannot otherwise be utilized during this three-hour period. There is less than eight hours' janitor work to be performed in any 24-hour period; and if the intermittent assignment had not been in effect during the period of this claim, it would have either been necessary that the janitor be paid two hours overtime at time and one-half rate six days a week, or to have employed two men to perform the work that can easily be performed by one employe within eight hours or less on any day.

The Chief Dispatcher, Trick Dispatcher, and Telegraph Offices are open 24 hours a day, with the least number of employes on duty immediately prior to 8:00 A. M. The offices of Division Superintendent, Assistant Superintendent, and Division Engineer are open 8:00 A. M. to 5:00 P. M., which makes it desirable and necessary that the three offices first mentioned be cleaned between 7:00 A. M. and 8:00 A. M., and the three offices last mentioned between 5:00 P. M. and 6:00 P. M.

Under the conditions outlined above, the intermittent assignment of the janitor at Pine Bluff, Arkansas, is clearly authorized by Rule 46, quoted in the Carrier's Statement of Facts; therefore, the Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: There is involved here directly Rule 46 of the current agreement and incidentally Rules 45, 54 and 57. These rules read as follows:

"Rule 45. HOURS OF SERVICE AND MEAL PERIOD—Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

"Rule 46. INTERMITTENT SERVICE—Where service is intermittent, eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employes filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

"Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the Trustee and duly accredited representatives of the employes. For such excepted positions the foregoing paragraph shall not apply.

"This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

"Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employes cannot otherwise be utilized.

"Employes covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours."

"Rule 54. OVERTIME AND CALLS—Except as otherwise provided in these rules, time in excess of eight hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

"Rule 57. ABSORBING OVERTIME—Employees will not be required to suspend work during regular hours to absorb overtime."

The meaning of Rule 46, when it is read in the light of numerous awards and of Interpretation No. 3 to Decision No. 630 of the United States Railroad Labor Board, is perfectly clear. It establishes the conditions under which the Carrier is permitted to break the continuity of service over a twelve-hour period. It may be done by agreement. With that we are not here concerned. It may be done when two conditions exist: (1) at places where during the hours of the assignment there is no work to be performed for periods of more than one hour's duration, and (2) at places where during the period there is no way of otherwise utilizing the employee's services. It is obvious that the rule is violated when during the interval of release the work which the employee was doing is assigned to others. Awards 100, 200, 202, 203, 302, 401, 463, 1037.

The difficulty is not now with the meaning of the rule but with its application, which involves a question of fact. Its proper application is for the Carrier and it is for the employee to show that the practice of the Carrier violates the rule.

In the instant case the Employees' Statement of Facts shows that the duties performed by him were the ordinary and usual duties of a janitor. The only possible exception is the delivering of the mail and getting it ready for the trains. And we are satisfied that the handling of the mail was a relatively minor matter. The Carrier maintains that the ordinary janitor's duties could not, during the noon interval, be carried on, because the cleaning had to be done during the hours when work in the offices was light and there is no direct evidence in the record to refute this assertion. What apparently is relied on by the Committee is the fact that the employee had for a long time been assigned to work during those hours, and the deduction is sought to be drawn that therefore there must have been work to be done at these times which continued after the change in time was instituted. But this conclusion does not necessarily follow and is not justified in the absence of any evidence showing work done or which could have been done during this period. And the same might be said for the argument that the restoration of the old hours on November 1, 1943 is proof that there was work which could have been done prior thereto. There is evidence that there were times during the noon interval when another employee collected or delivered mail. This was said to take but a few minutes and is an incidental type of service which might have been performed by anyone available at the moment. By itself, we do not think it shows any violation of the rule.

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 did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.