

Award No. 2694  
Docket No. CL-2726

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Edward F. Carter, 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:

The Carrier be required to restore the \$20.00 per month salary allowance to L. D. Lewis, employed in the General Manager's Office at Houston, retroactive to November 16, 1942, the date it was discontinued.

**EMPLOYES' STATEMENT OF FACTS:** Prior to April 1, 1939, the Clerks' Agreement did not cover the General Manager's Office. The revised Agreement of April 1, 1939 was extended to cover all clerical positions in that office.

The Agreement of April 1, 1939 was negotiated with, and signed by, General Manager W. G. Choate, representing the Carrier. Mr. Choate was also General Manager of the Houston Belt & Terminal Railway Company and had been for many years.

The Carrier had in effect a rather unusual arrangement regarding salaries of clerks in the General Manager's Office. 20% of the salary of six clerks in the General Manager's Office was billed against the H. B. & T. These employees were carried on the Gulf Coast Lines' payroll for the full amount of their salary. However, a different arrangement was in effect for the position held by Mr. Lewis.

Instead of billing the H. B. & T. for a portion of Mr. Lewis' salary, as was done for other employees, the General Manager elected to carry Mr. Lewis on the H. B. & T. payroll for \$20.00 per month.

The above arrangement was not objectionable to the Organization and was continued until November 15, 1942.

The Agreement of April 1, 1939 listed, in Rule 1, all of the positions ordinarily referred to as "excepted" positions, together with rates of pay and we quote below Rule 1 of that Agreement, together with that portion of the positions in the General Manager's Office:

on corresponding position at Palestine, which is conclusive evidence that the salary paid him by the Missouri Pacific Lines was in full compensation for his services as Traveling Timekeeper with this company, and that the \$20.00 per month paid him by the H. B. & T. Company had no connection with and was separate and apart from his service with the Missouri Pacific Lines. The Carrier has previously shown that Mr. Lewis' position of Traveling Timekeeper at Houston was created subsequent to, and the rate established thereon was in conformity with, a similar position at Palestine.

(5) Following the change of General Managers on the H. B. & T. and the decision of that company that the service previously performed by Mr. Lewis as Time Checker for that company was no longer required and as a result thereof he discontinued to perform service for that property and accordingly was removed from their payroll, the management of the Missouri Pacific Lines had no obligation to increase Mr. Lewis' salary as Traveling Timekeeper in the amount of \$20.00 per month to offset the reduction of that amount following his removal from the payroll of the H. B. & T.

(6) The Brotherhood of Railway and Steamship Clerks does not properly have any claim against the Missouri Pacific Lines as a result of Mr. Lewis being removed from the payroll of the Houston Belt & Terminal Company. The case is, obviously, one for handling between the Clerks' Organization and the Houston Belt & Terminal Company, certainly not between the Clerks' Organization and the Missouri Pacific Lines.

When consideration is given to all the facts in this case as set forth herein, it is clearly evident that the contention of the Employees and the accompanying claim presented to the Carrier is entirely without basis in equity, and, obviously, the claim is not supported by any contractual or other obligation on the part of this Carrier, and, accordingly, the contention of the Employees should be dismissed and the claim denied.

**OPINION OF BOARD:** The record shows that prior to October 16, 1942, Mr. W. G. Choate was General Manager of the Houston Belt and Terminal Railway and of the Gulf Coast Lines. Each of these carriers had separate agreements with the Clerks' Organization. On April 1, 1939, the position occupied by L. D. Lewis, here involved, was placed under the scope of the Clerks' Agreement for the first time.

The record further shows that effective March 1, 1929, Mr. Choate placed Lewis on the pay roll of the Houston Belt and Terminal Railway at a salary of \$20 per month. He was at that time on the pay roll of the Gulf Coast Lines at a rate of \$250 per month. A wage increase on December 1, 1941, increased the monthly rate to \$274.33. On December 27, 1943, the rate was increased to \$9.74 per day. In August of 1942, Mr. Choate retired as general manager of these two carriers and the position of general manager was separately filled by each carrier. The new manager of the Houston Belt and Terminal Railway relieved Lewis of any duties in connection with that road and removed him from its pay roll. Claimant contends that this action resulted in a reduction of pay of \$20 per month contrary to the provisions of the current agreement between the Clerks' Organization and the Gulf Coast Lines.

When the agreement of April 1, 1939, was entered into, Lewis was rated at \$250 per month on the Gulf Coast Lines and was so carried on their pay roll. There were several other employees in the General Manager's office who performed services for both roads. It appears that the salaries of these employees were paid by the Gulf Coast Lines and 20% thereof charged to the Houston Belt and Terminal Railway. As to Lewis, this plan was never followed, he being carried on the pay roll of the Houston Belt and Terminal Railway and paid directly by it.

The Carrier contends that Lewis was carried on the pay roll at a rate of \$250 per month, plus subsequent wage increases, the same rate that similar

positions were paid. It is also shown that the rate being paid by the Carrier is the rate negotiated at the time the position was placed within the scope of the Clerks' Agreement, wage increases added. It is not disputed that Lewis has not been required by the Gulf Coast Lines to perform any services for the Houston Belt and Terminal Railway since his removal from the pay roll of that road.

The arrangement whereby Lewis was to receive an additional \$20 to be paid by the Houston Belt and Terminal Railway was known to the Gulf Coast Lines at the time. That he continued to receive it long after he discontinued any service for the Houston Belt and Terminal Railway is established by the record. We think the rule is that where the rate of pay of the carrier is influenced or in part fixed by the rate paid to the same employee by another employer, such employee of the carrier cannot be required to suffer a reduction of pay under the terms of the current agreement except by negotiation. Where the position with an outside employer is a mere sinecure having no relation to the fixing of the rate of pay under the existing agreement, the loss of such position affords no basis for a claim against the carrier. Claimants cite Awards 181, 218, 297 and 522 in support of their claim. Each of these were cases where employees were paid commissions for services performed for companies other than the principal employer and a wage rate by the principal employer. In each of them, the commissions were found to be an essential factor in determining the wages to be paid by the carrier, the principal employer. They do not control such a situation as we have here. Claimants also cite Decision No. 2454, Docket 2819, United States Railroad Labor Board, as supporting their position. The award indicates that it is similar on the facts to the case before us. While the claim was allowed in that case, no opinion accompanies the award and the logic affording the basis of the award is not shown. We fail to see any basis for the conclusion reached and consequently we do not feel that it provides a precedent upon which we can safely rely.

In the present case, Lewis was receiving the full amount that the current agreement called for, plus subsequent wage increases. The \$20 paid each month by the Houston Belt and Terminal Railway was in no way a factor in the wage structure under which Lewis was paid by the Gulf Coast Lines. His salary from that source was dependent solely upon the current agreement and he has received the maximum amount which it provides. No basis for an affirmative award exists.

**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 under the facts shown by the record did not violate the current agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.