

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:
**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE TEXAS MEXICAN RAILWAY COMPANY**

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

- (a) The Carrier violated the Clerks' Agreement by deducting four (4) hours from the pay of Joe Gallahan on Saturday, January 9, 1943; also,
- (b) Claim that Mr. Gallahan be reimbursed in the amount of four (4) hours' pay.

EMPLOYEES' STATEMENT OF FACTS: On Saturday, January 9, 1943, Mr. Joe Gallahan was assigned as Clerk in the Auditor's office at Laredo.

His work was such that it was not necessary for him to work Saturday afternoon, however, four (4) hours was deducted from his pay.

There are five employes in the Interline Department, including Mr. Gallahan. The work of the other four employes was such that they were of the opinion it could not be reasonably deferred, therefore, they worked on the Saturday afternoon in question.

The following tabulation of overtime worked by the individual clerks during first half of January in the Interline Department will disclose that there was no necessity of Mr. Joe Gallahan working that afternoon.

DATE	OVERTIME HOURS WORKED BY				
	C. C. Hackenjoes	R. E. Gallahan	Robin Tannenbaum	M. V. Forbis	Joe Gallahan
January 1					
2					
3					
4					
5	3	3	3	3	3
6	3	3	3	3	
7	3	3	3	3	
8	3	3	3	3	
9	3	3	3	3	
10	Sunday	Sunday	Sunday	Sunday	Sunday
11	3	3	3	3	
12	3	3	3	3	
13	3	3	3	3	
14	3	3	3	3	3
15	3	3	3	3	3
Total—	33	33	33	33	12

and the Assistant Auditor that he would get in trouble if he did not obey the instructions. Four of the five Interline Clerks worked, but Mr. Gallahan, despite positive instructions to work and definite warning against disregarding these instructions, refused to work. As Mr. Gallahan was required to work eight hours a day to earn eight hours' pay, including Saturday afternoon when the work could not be reasonably deferred, and as he worked only four hours when he should have worked eight, Carrier only paid him for the four hours actually worked. Had Mr. Gallahan worked the full eight hours he was supposed to work, he would have been paid for eight hours and the Carrier would have avoided paying overtime, at one and one-half times the regular rate of pay, to others for the performance of Mr. Gallahan's work.

It is significant to note that in presenting this claim on the property the B. of R. C. has not contended either that the work could have been reasonably deferred or that the Carrier exceeded its authority in instructing Mr. Gallahan to work on Saturday afternoon. On the contrary, the B. of R. C. has heretofore taken the position that Rule 57 requires eight hours' pay for four hours' work on Saturdays regardless of the circumstances. Obviously the rule is not susceptible of this interpretation, and neither the B. of R. C. or any other employe has ever contended for it before. On the other hand Rule 57 recognizes that Saturday afternoon is like any other weekday afternoon when the employe's work can not be reasonably deferred. It certainly does not give an employe the exclusive option of determining whether he will or will not work and the absolute right to demand pay for the afternoon hours even though he refuses to work in defiance of orders to do so.

When ordered to work on Saturday afternoon, it was Mr. Gallahan's duty to do so. If he felt this order was a violation of the rule, or if he was not properly compensated for his work, he was privileged to present a claim. However, there is no justification for his refusing to work on this occasion, and no basis for his claiming pay for more hours than he actually worked. Carrier understands that the Brotherhoods (including the B. of R. C.) have always agreed that employes are required to obey work orders. If the orders are improper, the employes have ample means of recourse after they have complied therewith. If employes are permitted to disregard orders, as did Mr. Gallahan in this case, they, rather than the management, would actually determine the conduct of the business. Any employe who refuses to work when ordered to work certainly is not entitled to pay for hours not worked.

Carrier submits that this claim is wholly without merit, and should be in all things denied.

OPINION OF BOARD: On Saturday, January 9, 1943, Joe Gallahan and four other clerks were instructed to work that afternoon. Gallahan did not work that afternoon, and the Carrier deducted four hours from his pay for failure to work. The record shows that the other four employes did work and also worked three hours overtime each day from January 11th to 15th, and Gallahan worked overtime three hours each for the 13th, 14th, and 15th of January.

Petitioner contends that Gallahan should have been paid for the four hours he did not work Saturday afternoon, January 9th, under Rule 57 of the current Agreement, which reads: "Only such employes whose work cannot be reasonably deferred, shall be required to work Saturday afternoons, * * *"

The record shows that Gallahan and his wife operated a beer garden located about two blocks from the Railroad Station and the only reasonable inference to be drawn from this record is that if he worked the Saturday afternoon in question, it would have interfered with this private business venture. The other clerks worked that day at straight time. The record shows that his work could not be reasonably deferred that afternoon. Therefore, under Rules Nos. 37 and 47, he should have worked that afternoon if he wanted to be paid for that Saturday afternoon's work.

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 the Carrier did not violate the provisions of the Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.