

Award No. 2781
Docket No. CL-2735

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, 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 correct rate of pay for position of General Clerk in the Superintendent's office at Houston, Texas, is \$8.26 per day. Also

(b) Claim that employees involved be compensated for all losses sustained because of the agreement violation as detailed in Exhibit D.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1, 1933, the position here in dispute was assigned on a 365 day annual basis with rate of \$5.25 per day.

Effective March 1, 1933, the Annual assignment was reduced to 306 days—the rate of pay remaining \$5.25 per day.

On July 22, 1937, the position, having become vacant, was advertised as disclosed by bulletin quoted below:

"MISSOURI PACIFIC LINES
International-Great Northern Railroad Co.
HOUSTON TERMINAL DIVISION

Houston, Texas, July 22, 1937

BULLETIN NO. 1

ALL CLERKS—Superintendent's Offices—

(Palestine-Houston Terminal Division.)

Bids will be received at this office, for a period of Five (5) days from the date of the bulletin, in connection with the temporary vacancy as shown below:

- | | |
|-------------|---|
| 1. LOCATION | Superintendent's Office
(Houston, Texas) |
| 2. TITLE | General Clerk |

above is conclusive evidence that there was no question concerning the assignment of the position of General Clerk in the Superintendent's Office at Houston following the issuance of Bulletin No. 1 dated July 22, 1937, that the occupant of the position prior and subsequent thereto worked six days per week, not seven days per week as now contended by the Employees.

When consideration is given to the record in this case which conclusively shows that the occupant of the position of General Clerk in the Superintendent's Office at Houston has been assigned to work but six days per week for several years both prior and subsequent to July 31, 1937, and that since 1933 the occupant of that position has performed service but six days per week, it is clearly evident that the claim set forth in Item (a) of the Employees' ex parte Statement of Claim is entirely without merit or basis and should, therefore, be denied.

OPINION OF BOARD: Prior to March 1, 1933, the position here in dispute was assigned on a 365-day annual basis with rate of \$5.25 per day. Effective March 1, 1933, the annual assignment was reduced to 306 days, the rate of pay remaining at \$5.25 per day. In 1932, a dispute arose between the Carrier and the Brotherhood regarding the Carrier reducing annual assignments from 365 to 306 days. Apparently this dispute was in the process of handling for approximately seven years before an agreement was reached.

On March 17, 1939, Mr. W. G. Choate, one of the officials of the Carrier agreed in writing in what is referred to as the Robstown case as follows:

"In order to close out this claim I am agreeable to the payment for each Sunday reduced on this position from July 15, 1938, to Nov. 28, 1938, at which time the 365-day assignment was re-established. It is understood that this would amount to \$128.00 or 20 Sundays at \$6.40 per day and that in the future so long as position is maintained we will adhere to the 365 day assignment on position.

On all positions where the daily rate was established on the basis of 365-day assignment the same conditions as outlined above will apply."

Clearly this agreement would cover the case at bar, but it is the claim of the Carrier that, although this position existed as a 306-day per year assignment since March 1, 1933, no claim for adjustment in rate of pay was made to the Carrier until Aug. 25, 1943; that this was nearly four years after the effective date of the present agreement which was Nov. 1st, 1940.

This Referee would not hesitate to hold with the Carrier upon the position advanced that the long delay of better than ten years and the writing of a new agreement, to wit:—the Agreement of Nov. 1st, 1940, would bar the right of this claimant to the relief he now asks. But this record clearly shows that the Carrier itself has on several occasions upon a claim being filed by the Employees recognized the requirements of the Agreement and increased the rate of pay sufficiently so that the earnings on a 306-day annual assignment are the same as they were on a 365-day annual assignment.

We call attention to one of these adjustments involving the position of cashier at Kingsville which, during the year 1930, the Carrier abolished and which at that time had an annual assignment of 365 days. The position was not restored until in April, 1942, approximately ten years later. At that time it was reestablished on a 306-day basis. Employees made claim under the provisions of the memorandum agreement insisting that, although the position had been out of existence approximately ten years, the requirement of the memorandum agreement had not been met. The Carrier under date of Aug. 25, 1942, agreed with the position claimed by the Employees and increased the rate of pay accordingly.

Thus, under the provisions of the Agreement cited and the interpretation and application given thereto by the parties, in some instances adjustments being made as far back as 1930, the claim must be sustained.

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 claim of the Petitioner must be sustained from August 25, 1943.

AWARD

Claim sustained from August 25, 1943.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.