

Award No. 3258
Docket No. CL-3078

**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, THE ST. LOUIS, BROWNSVILLE &
MEXICO RAILWAY COMPANY, THE BEAUMONT, SOUR
LAKE & WESTERN RAILROAD COMPANY, SAN AN-
TONIO, UVALDE & GULF RAILROAD COMPANY, THE
ORANGE & NORTHWESTERN RAILROAD COMPANY,
IBERIA, ST. MARY & EASTERN RAILROAD COMPANY,
SAN BENITO & RIO GRANDE VALLEY RAILWAY COM-
PANY, NEW ORLEANS, TEXAS & MEXICO RAILWAY
COMPANY, NEW IBERIA & NORTHERN RAILROAD COM-
PANY, SAN ANTONIO SOUTHERN RAILWAY COMPANY,
HOUSTON & BRAZOS VALLEY RAILWAY COMPANY,
HOUSTON NORTH SHORE RAILWAY COMPANY, ASHER-
TON & GULF RAILWAY COMPANY, RIO GRANDE CITY
RAILWAY COMPANY, ASPHALT BELT RAILWAY COM-
PANY, SUGARLAND RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

- (a) The Carrier is violating the Clerks' Agreement at Taylor, Texas, by refusing to pay the Swing Clerk at the rate of time and one-half for services performed on Wednesdays between the hours of 3:59 p.m. and 11:59 p.m. after having completed one eight-hour tour of duty at 7:59 a.m. Wednesday; also
- (b) Claim that the Carrier is violating the Clerks' Agreement at Taylor, Texas, by refusing to pay the Swing Clerk at the rate of time and one-half for services performed on Fridays between the hours of 7:59 a.m. and 3:59 p.m. after having completed one eight-hour tour of duty at 11:59 p.m. Thursday; also
- (c) Claim that the Carrier now be required to pay the Swing Clerk the difference between the straight time rate and the time and one-half rate each Wednesday and Friday retroactive to the date the violation began.

the employees in the case under consideration, would continue to 11:00 P.M. Sept. 3, and on that basis employee worked more than one assignment in the same 24 hour period. As shown above, however, the Board denied the Employees' claim for payment at time and one-half rate.

When consideration is given to the several rules quoted and discussed herein; i.e., Rules 37, 42, 47, and 48, the requirements of each of them, particularly the purpose and intent of Rule 47 providing that employees necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven and clearly contemplates the employment of a relief or swing clerk to relieve such employees, and that none of those rules specifically provides for or even contemplates the payment of time and one-half under the circumstances existing in this case, it is clearly evident that the contention and accompanying claim of the Employees is without basis or justification under the rules of the working agreement; and, as has previously been shown, U. S. R.R.L.B. Decision No. 3841 supports the employment and use of relief or swing clerks without the payment of time and one-half as contended by the Employees in the case under consideration.

In view of all the facts and circumstances involved in this case, it is the position of the Carrier that the contention of the Employees should be dismissed and the claim denied.

Furthermore, the submission of this case to the Adjustment Board is, without question, an attempt on the part of the Employees to obtain a new rule (in a manner contrary to the provisions of Section 6 of the Railway Labor Act) that would require the Carrier to pay time and one-half under circumstances not provided in nor contemplated by present rules in the current working agreement, and as the granting of new rules is a function not coming within the province of the National Railroad Adjustment Board the contention of the Employees should, therefore, be dismissed.

OPINION OF BOARD: On December 11, 1944, the Carrier bulletined the position of Swing Clerk as follows:

Monday and Tuesday,	11:59 p.m. to 7:59 a.m.
Wednesday and Thursday,	3:59 p.m. to 11:59 p.m.
Friday and Saturday,	7:59 a.m. to 3:59 p.m.

It is the position of the Organization that in two twenty-four hour periods, 11:59 P.M. Tuesday to 11:59 P.M. Wednesday, and 3:59 P.M. Thursday to 3:59 P.M. Friday, the Swing Clerk performed sixteen hours service entitling him to overtime for the second eight hours on each of these days.

The Organization first contends that the assignment as bulletined is violative of the starting time rule. Rule 21(a), current Agreement. The six regular positions have a fixed starting time which is the same each day. The very term "Swing" or "Relief" Clerk, as those terms are used in railroad nomenclature, contemplates a clerk who will work a different assignment from day to day in order that each occupant of the regular position relieved might have one day of rest each week. We hold, therefore, that the mere fact that a Swing or Relief Clerk may have a different starting time each day was never contemplated as a violation of the starting time rule. The purpose of the rule was to require uniform tours of duty for ordinary assignments. The very purpose of a Swing Clerk is to work an irregular assignment on several positions to afford a day of rest each week to the occupants thereof. We are of the opinion, therefore, that the starting time rule, construed in the light of usual railroad parlance and the evil intended to be remedied, was never intended to and does not include a Swing or Relief man within its provisions. A Swing or Relief job is not a regular assignment within the meaning of the starting time rule.

The Organization relies, also, on Rule 37(a) of the current Agreement, which reads:

"Except as otherwise provided in this rule, eight (8) consecutive hours or less, exclusive of the meal period shall constitute a day's work for which eight (8) hours pay will be allowed. Time in excess of that on any day will be considered as overtime and paid on the minute basis at the rate of time and one-half."

We think the assignment was improper under Rule 37(a) if overtime was to be avoided. The Swing position could have been bulletined to avoid overtime by the simple expedient of exchanging the Monday and Tuesday assignments with those assigned for Friday and Saturday. This Division appears to have previously decided the matter as the Organization contends. See Award 2053. Whether the same rule would apply where it is impossible to bulletin a relief position without assigning more than eight hours work in any twenty-four hour period, we do not here decide. Under the record here made, the Claimant is entitled to an affirmative award as claimed.

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 Agreement was violated as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1946.