

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RAILROAD CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO
RAILWAY CO.; THE BEAUMONT, SOUR LAKE & WESTERN
RAILWAY CO.; SAN ANTONIO, UVALDE & GULF RAILROAD
CO.; THE ORANGE & NORTHWESTERN RAILROAD CO.;
IBERIA, ST. MARY & EASTERN RAILROAD CO.; SAN BENITO
& RIO GRANDE VALLEY RAILWAY CO.; NEW ORLEANS,
TEXAS & MEXICO RAILWAY CO.; NEW IBERIA & NORTHERN
RAILROAD CO.; SAN ANTONIO SOUTHERN RAILWAY CO.;
HOUSTON & BRAZOS VALLEY RAILWAY CO.; HOUSTON
NORTH SHORE RAILWAY CO.; ASHERTON & GULF RAIL-
WAY CO.; RIO GRANDE CITY RAILWAY CO.; ASPHALT BELT
RAILWAY CO.; SUGARLAND RAILWAY CO.**

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Kingsville, Texas, beginning November 28, 1945, when it withheld Utility Clerk, Mr. E. C. Hannes, from his assigned position and work, and required him, against his wishes, to work an entirely different position. Also,

(b) Claim that Mr. Hannes be paid at his regular rate of pay for each day he was withheld from his assigned position and work; this, in addition to the amount he has actually been paid for working the position of Transportation Clerk.

EMPLOYEES' STATEMENT OF FACTS: Mr. Hannes entered the service of this Carrier on September 21, 1925, and his name appears on the current seniority roster with that date. Mr. Hannes now has nearly twenty-one years seniority.

On November 26, 1943, the Carrier issued Bulletin No. 48 advertising position of Utility Clerk. The duties required of the position were clearly stated on the bulletin as—

"The Carrier contends that the situation presented comes within the purview of Rule 13 which, so far as pertinent, provides:

"Regularly assigned employees will not be required to perform service on other than their regular positions except in emergencies. When they are required to perform service on other than their regular positions, they will be paid the rates of the positions they fill but not less than their regular rates and in all cases will be allowed actual necessary expenses while away from their regularly assigned stations.

"In no case will less than one day's pay be allowed for each twenty-four (24) hours held out of their regular positions or away from home stations."

"Aside from all we have heretofore said we think the first and last paragraphs of Rule 13 are controlling for the situation presented in this dispute. Instead of working his regular assignment claimant is shifted to the second trick because of the emergency created by the illness of the telegrapher regularly assigned to that trick. In the face of the provisions of Rule 13 the Call rule (Rule 5) has no bearing upon the case. Under the rules and upon the record claimant was entitled to payment at straight time only for work performed on the second trick (Award 2444); and he was not entitled to a day's pay on account of his regular assignment which he did not work."

In the final analysis the foregoing record shows:

1. No rule in the Clerks' Agreement to support the contention and claim of the Employees.
2. Rule 50 of the Clerks' Agreement herein quoted and relied upon by the Carrier not only contemplates Employees on occasion being temporarily assigned to other than their regular position, but specifically provides how they will be compensated when they are used on other than their regular position.
3. Mr. Hannes was used and has been compensated in accordance with the provisions of Rule 50.
4. During the period in question Mr. Hannes did not perform service on his regular position in addition to service temporarily performed on position of Transportation Clerk, nor could he have done so as the daily hours of assignment of both positions were the same, i.e., 8:00 A. M. to 5:00 P. M., with lunch period from 12:00 o'clock noon to 1:00 P. M.
5. Since Mr. Hannes performed service on but one position on each of the dates in question and could not have performed service on his regular position in addition to service performed on his temporary assignment certainly there is no justification for the claim presented for two days pay on each of the dates involved in this claim.
6. The principle involved in this case has previously been ruled on by your Honorable Board in Award No. 2511, hereinbefore cited, which denied the Employees' claim for two days pay, i.e., the rate of his regular position in addition to the rate of the position on which he was temporarily used.
7. Award No. 2262, above referred to, conclusively supports the position of the Carrier in the case under consideration.

Based on the above it is the position of the Carrier that the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: Decision of this dispute must, of necessity, follow that presented in Docket No. CL-3411, Award No. 3417. Hannes is the Utility Clerk whose position Faulk, the Claimant in that dispute, took

over. Hannes was assigned to work Faulk's position as Transportation Clerk. His claim is the counterpart of Faulk's. What was said in disposing of the latter's claim is equally applicable to this.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1947.

DISSENT TO AWARDS NOS. 3416, 3417, 3418, DOCKETS CL-3390, CL-3411, CL-3413.

These Awards, Nos. 3416, 3417, 3418, finding violations of Rule 44, make declaration that the Board has several times sustained similar claims under rules identical in terms with Rule No. 44, naming four other late awards, each of which late awards related to different circumstances and, in their Opinions leading to the Awards, contained differentiating statements, here disregarded, which reserved, at least in part, the intent and practical application of the rule relating to non-suspension of work to absorb overtime.

Those four awards relied upon, though not as arbitrarily applying the rule to the circumstances therein respectively involved as do the awards in the three instant cases, had their genesis, as a perusal of them will show, in Award No. 2346, discussed, but not referred to in the instant Opinions of Board, which lately preceding the four awards relied upon, gave application of the rule to a circumstance of a temporary assignment of an employe to other than his regular assignment.

That Award No. 2346, however, did note the fact that the claimant there protested the change but was required to make it. The award further contained the statement that "in the absence of proper showing on the part of the Carrier that avoidance of overtime was not the motivating cause, it may be assumed that it was" and, proceeding further to find under another rule there involved that the Carrier "does not show that there was good and sufficient cause for the change of positions", declared violation to be established.

During the existence of this Board prior to the issuance of Award No. 2346, and those later four restrictive awards upon which the instant awards here rely, the records of the Third Division contain numerous cases, showing

circumstances of similar temporary assignments as well as claims that circumstances of similar temporary assignments should have been made, which former cases contained statements by employes and carriers alike and, as well submissions respectively of facts incident to those cases, evidencing the knowledge of the employes' organization presenting the instant claims that such circumstances as are here involved did not comprehend the restrictions of the rule relating to non-suspension of work to absorb overtime.

The finding of a violation of the Agreement through declaration "that overtime was effectually absorbed by suspension" of the claimants' work on their own positions under the respective circumstances of these three cases and through reliance upon the assertion that

"this Board has several times sustained similar claims under rules identical in terms with rule No. 44. See Awards 2695, 2823, 2859 and 2884,"

is one that gives improper application to the rule contrary to its meaning and intent as it has been understood and generally accepted by carriers and employes, including the carrier and employes here involved. This is more particularly apparent when recognition is given to the generally accepted custom of 25 to 30 years since the rule here involved relating to non-suspension of work to absorb overtime was promulgated by the Director General of Railroads and to its subsequent application.

The awards being contrary to the meaning and intent of the agreement between the parties, as evidence by the records in the cases, are unwarranted.

/s/ C. C. COOK
/s/ A. H. JONES
/s/ R. H. ALLISON
/s/ R. F. RAY
/s/ C. P. DUGAN