

Award No. 3765

Docket No. CL-3717

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
R. R. CO., THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.,
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO., SAN
ANTONIO, UVALDE & GULF R. R. CO., THE ORANGE &
NORTHWESTERN R. R. CO., IBERIA, ST. MARY & EASTERN
R. R. CO., SAN BENITO & RIO GRANDE VALLEY R. R. CO.,
NEW ORLEANS, TEXAS & MEXICO RY. CO., NEW IBERIA &
NORTHERN R. R. CO., SAN ANTONIO SOUTHERN RY. CO.,
HOUSTON & BRAZOS VALLEY RY. CO., HOUSTON NORTH
SHORE RY. CO., ASHERTON & GULF RY. CO., RIO GRANDE
CITY RY. CO., ASPHALT BELT RY. CO., SUGARLAND RY. 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 Palestine, Texas on July 7, 1946, when it discontinued position of Ticket Clerk, assigned 11:30 P. M. to 7:30 A. M. Also,

(b) Claim that the Carrier further violated the Clerks' Agreement by assigning the remaining passenger force hours of work contrary to Paragraph (a) of Rule 42. Also,

(c) Claim that all employees involved in or affected by the agreement violation be paid additionally at the rate of time and one-half for all service performed prior to the specific starting times named in Rule 42 (a).

EMPLOYES' STATEMENT OF FACTS: Prior to July 7, 1946 the Passenger Station force at Palestine consisted of the following with assigned hours as shown below:

	POSITION	ASSIGNED HOURS
Ticket Clerk	7:30 AM to 3:30 PM.
" "	3:30 PM to 11:30 PM.
" "	11:30 PM to 7:30 AM.

Award No. 956 (BRC v. CRI & P) covered:

"Claim of the Rock Island System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, on the Chicago, Rock Island and Pacific Railway, for reinstatement of position of mail helper, rate \$102.80 per month, El Reno, Oklahoma, passenger station, and reimbursement of all employees for any monetary loss sustained account this position being discontinued September 6th, 1938."

In the above case the Board found "that no violation of the Agreement is shown", and denied the claim.

Award No. 974 (BRC v. KCS) covered

"Claim of the System Committee of the Brotherhood that the Carrier violated agreement rules when on January 22, 1938 it abolished position in its General Offices classified as Interline Clerk rate \$6.18 per day and concurrent therewith assigned the major portion of the duties thereof to lower rated employees, also claim that said position shall be reestablished and employees affected by said violation shall be reimbursed for all monetary loss sustained." The Employees claim in that case was denied.

In Award No. 2352 your Honorable Board sustained the right of the Carrier to discontinue clerical position and assign the remaining work to other clerical Employees.

In Awards 931, 1314, 1593, 1694, 2334, and 3211 your Honorable Board upheld the right of the Carrier to discontinue positions and have any remaining work performed by parties not covered by the Clerks' Agreement. In the case under consideration the work formerly performed by the discontinued ticket clerk position was handled by the remaining ticket clerks in that office in the same manner that it has been handled for many years prior to this claim.

The record in this case conclusively shows that:

1. There was no violation of Rule 52 (b), as alleged by the Employees, by reason of discontinuing the temporary position of ticket clerk following close of business July 7, 1946, for two reasons: (a) the position was not established due to any increase in business; (b) there was actually a decrease in the passenger revenues in 1946, when the position was discontinued, as compared with 1945, when the position was temporarily established.

2. There is no violation of Rule 42 (a) as alleged by the Employees by reason of the starting time of the various positions at the Passenger Station. Rule 42 (a) covers the starting time of positions where continuous around-the-clock 24-hour service is maintained, and continuous service is not maintained at the Passenger Station. The starting time of the various assignments is not in violation of any other rule in the Clerks' Agreement.

3. Your Honorable Board has previously, in the several awards referred to by the Carrier, sustained the right of Management to discontinue clerical positions when such positions are not considered necessary; and, further, the discontinuance of such positions is specifically provided for by several rules in the Agreement cited by the Carrier.

It is the position of the Carrier, therefore, that the contention of the Employees be dismissed and the accompanying claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee claims that the Carrier violated their agreement on July 7, 1946 when it discontinued the position of Ticket Clerk, assigned duty from 11:30 P. M. to 7:30 A. M., in its Palestine office and reassigned the remaining passenger force to hours of work

contrary to Rule 42 (a). It asks that all employees affected thereby be compensated on an overtime basis for all services performed prior to the specific starting times as provided in Rule 42 (a).

Rule 52 (b) of the parties' agreement provides:

"Where the duties of a particular position materially decrease in volume justifying abolishing the position, the remaining duties will be reassigned in accordance with Rule 50."

Rule 42 (a) thereof provides:

"All assignments will have a fixed starting time. Where work is performed covering the 24 hour period, the starting time of each shift will be between the hours of five (5) and eight (8) A.M., two (2) and four (4) P.M., and ten (10) P.M. and midnight."

In Award 1591 we have said, in construing the language of 42 (a), that:

"* * * each shift in general, whether part of a 24-hour sequence or not, should start within the assigned times at points 'where work is performed covering the 24-hour period'."

The record shows that prior to July 7, 1946 the Carrier had maintained three ticket clerks in its Palestine, Texas, passenger station and provided twenty-four hour, or around the clock, service. The third of these positions, which made the twenty-four hour service possible, was created in February of 1945, but actually filled on April 28, 1945. It was bulletined as a temporary position. This latter position was abolished on July 7, 1946 and the duties of the position assigned to the other two ticket clerks, whose hours of duty were reassigned. With their reassignment they were directed by the Carrier that they remain on duty until Trains Nos. 25 and 26 had departed. The Cashier-Ticket Clerk thus being regularly required to work overtime each day for at least thirty minutes in waiting for Train No. 26 to depart. Likewise, Ticket Clerk No. 1 was required to regularly work overtime each day for at least an hour and fifteen minutes in waiting for Train No. 25 to depart. Actually the overtime worked was much longer, especially Ticket Clerk No. 1 who had to remain on duty until Train No. 25 departed.

Carrier contends there was such a material decrease in the volume of duties in the positions of ticket clerks that it was justified in abolishing one of these positions and assigning the remaining duties to the other two. While there is evidence that the passenger revenue of the Palestine passenger depot declined in 1946, as compared with 1945, we think that passenger revenue, in this case, is neither controlling nor conclusive with respect to a possible decrease in the services and duties of a ticket clerk during any given period or periods of the day. Here their duties are more related to and controlled by the train schedule, which requires these services for the benefit of the traveling public.

With the Carrier's contention that the train schedule was so changed that the need for ticket service during the twenty-four hour period of the day had materially decreased we cannot agree. From a study of the trains scheduled, both before and after the position was abolished, with relation to their times of arrival and departure we find there has been but slight change. While Train No. 25 was changed from arriving at 7:40 A. M. and departing at 8:00 A. M. to arriving at 6:45 A. M. and departing at 7:00 A. M., however, Train No. 21, which formerly arrived at 10:40 A. M. and departed at 10:55 A. M., was moved up to arrive at 9:55 A. M. and depart at 10:15 A. M., thus making only a change of twenty minutes in the time elapsing between these two trains. However, the change in the time of Train No. 26, which now leaves thirty-five minutes later, as related to Trains No. 7 and 27, now apparently Train No. 37, it shows the elapsed time has been decreased from four hours to three hours and twenty-five minutes, thus leaving less time between these trains and making the schedule more difficult to handle with less than twenty-four hour service.

That such is true and that the train schedule cannot be handled by the two remaining ticket clerks is fully evidenced by the fact that during the period of 56 days following the abolishing of this position the remaining two ticket clerks worked overtime on an average of over two hours and forty minutes per day.

Under the provisions of Rule 52 (b) of the parties' agreement we do not think the facts justified the Carrier in abolishing the position and that in doing so it violated the parties' agreement.

After the position of Ticket Clerk was abolished the Carrier no longer maintained twenty-four hour service and, on July 29, 1946, it reassigned the hours of the remaining station employees.

Carrier, previous to abolishing this position, maintained twenty-four hour service at the Palestine passenger depot. It abolished the position of ticket clerk therein by violating the parties' agreement. Consequently, if any employees in the passenger depot were assigned shifts contrary to provisions of 42 (a) such assignment was in violation thereof.

From what has been said we find the Carrier has violated the agreement as claimed and that the claim should 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 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 has violated the parties' agreement.

AWARD

Claim (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO 3765
DOCKET CL-3717

NAME OF ORGANIZATION: Brotherhood of Railway & Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes

NAME OF CARRIER:

Gulf Coast Lines; International-Great Northern
RR Co.; The St. Louis, Brownsville & Mexico
Ry. Co.; The Beaumont, Sour Lake & Western
Ry. Co.; San Antonio, Uvalde & Gulf RR Co.;
The Orange & Northwestern RR Co.; Iberia,
St. Mary & Eastern R Co.; San Benito & Rio
Grande Valley RR Co.; New Orleans, Texas &
Mexico Ry. Co.; New Iberia & Northern RR
Co.; San Antonio Southern Ry. Co.; Houston &
Brazos Valley Ry. Co.; Houston North Shore
Ry. Co.; Asherton & Gulf Ry. Co.; Rio Grande
City Ry. Co.; Asphalt Belt Ry. Co.; Sugarland
Ry. Co. (Guy A. Thompson, Trustee.)

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The application relates itself to Section (c) of the claim. That section of the claim is specific. No objection was made to the Board as to its form with reference to the basis of the compensation claimed, it was sustained without qualification, and it should be complied with as allowed, that is; all employees involved or affected by the Agreement violation should be paid additionally at the rate of time and one-half for all services performed prior to the specific starting times named in Rule 42 (a).

Since the claim for compensation relates itself solely to employees who performed service prior to the specific starting times named in Rule 42 (a) any claim of E. D. Monk, the ticket clerk whose position was abolished, was not included therein for the record fails to show that he performed any service for the Carrier in violation thereof during the period of time herein involved.

Referee Adolph E. Wenke, who sat with the Division as a Member when Award No. 3765 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1948.