

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

**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 & EAST-
ERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY.
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)

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

(a) The Carrier violated the Clerks' Agreement at San Antonio, Texas Depot Ticket Office beginning December 8, 1945 when it assigned four hours of higher rated accounting work to lower rated Ticket Clerk H. H. Marty. Also

(b) Claim that Mr. Marty be paid the difference between Accountant's rate and Ticket Clerk rate from December 8, 1945 until second position of Accountant was established in February 1946.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 3, 1945 position of Ticket Clerk No. 4, San Antonio Passenger Station was assigned to the Information Booth located in center of the station lobby. The duties of the position were to sell some few tickets and to furnish information to the traveling public. The position was assigned 2:30 P. M. to 10:30 P. M., and was held by S. M. Floyd.

On November 3, 1945 the Information Booth was closed, after which the position "was assigned in the Ticket Office to sell tickets, handle accounts,

to its main objective: the reduction of 365 days positions, unnecessary to continuing operation, to 306 day positions and, at the same time, protect the occupants of such positions in their annual earnings. To accord any meaning to the Agreement beyond this would extend its terms and distort its purpose.

The Organization has cited Awards Nos. 1614, 1627, 1846, 2008, 2239, 2781 in support of the claim now presented. Those Awards involve claims made by or on behalf of occupants of positions, unnecessary to continuous operation, which had been, or should have been, reduced from 365 days to 306 day positions. The decisions go no further than to hold that the occupant shall receive what he would have received had the position not been reduced from 365 to 306 days. Certainly they are not authority for holding that the Agreement was in any way designed to disturb the rates of pay of other positions. We do not think that Rules 50(a) and 52(a) have any application to the issue presented by this record."

In the case under consideration the Employees are attempting to do the very thing your Board in above Award 3420 denied them the right to do.

When consideration is given to all the facts and circumstances involved in the case under consideration, specifically the fact that no rule in the Clerks' Agreement has been violated as alleged by the Employees; that no work was performed by claimant on ticket clerk position No. 4 not included in and assigned thereto by bulletin advertising the position; together with the "Opinion of Board" as expressed in Award No. 3420 covering a previous case on this same property, it is clearly evident that the contention and claim of the Employees in the case under consideration is entirely without basis.

Therefore, it is the position of the Carrier that the contention of the Employees be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim, the pertinent rules of the Agreement, citation and digest of awards and the contentions of the parties are set forth above.

The Organization bases this claim on the proposition that Rule 50, entitled "Preservation of Rates", was violated by the Carrier in the case of Clerk H. H. Marty. The Carrier states the historical background of the rate paid for the position of accountant-ticket clerk and Letter Agreement of October 13, 1940 (set out above) and which relates to 365 day assignments, not necessary to continuous operation of the Carrier, being reduced to 306 day assignments with adjustment so that earnings will be the same as received for 365 days. The Carrier also cites awards which have been passed on similar claims governed by the Letter Agreement above referred to. See Awards 3420, 3550 and 3762.

Historically, the rate for the position in question, when created, was the same as that of ticket clerks. Any change in the rate was consummated by the Letter Agreement and did not change the rate but simply adjusted the same so that earnings for 306 days would equal the amount paid for 365 day assignments.

Therefore, in the opinion of the Board, Rule 50 does not apply in the instant situation.

The Organization argues that there is a difference in the duties of the jobs in question. However, the entire matter reverts to the rate paid at the time of creation of the position and the fact that the Letter Agreement did not differentiate between the positions under consideration but adjusted earnings on the basis of reduction of a 365 day assignment to one of 306 days.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.