Award No. 4164
Docket No. CL-4160

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 & EASTERN 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 August 31, 1946, by requiring Ticket Clerk W. W. Cox (and the party relieving him on his rest day) to perform accounting work, which is higher rated work. Also

(b) Claim that Mr. Cox, and those relieving or succeeding him, be paid the difference between the Ticket Clerk rate of $9.90 per day and the Accountant's rate of $11.17 per day. (Rates used have subsequently been increased.) Also

(c) Claim that the Accountant, Mr. J. L. Seymour, be paid at the rate of time and one-half for all time spent by Mr. Cox and others performing accounting work regularly assigned to Mr. Seymour's position.

EMPLOYES' STATEMENT OF FACTS: Mr. J. L. Seymour was assigned to position of Accountant in the San Antonio, Texas Depot Ticket Office by virtue of his seniority rights and the requirements of the Rules Agreement between the Carrier and the Brotherhood.

consideration. The contention and claim of the Employes was denied. For ready reference the following is quoted from "Opinion of Board" in Award 3420:

> "These rules have relevance only on the assumption that the letter of October 13, 1940 was designed to affect the wage structure set up by the controlling Agreement. Such assumption is warranted neither by the terms nor the intent of the Letter Agreement. It, of course, affects the daily rate of pay of the occupants of positions reduced from 365 to 306 days but that is only incidental to its main objective: the reduction of 365 day 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.
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> 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 day 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 Employes 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 Employes; that no work was performed by the ticket clerks not included in and assigned to them by bulletins advertising the positions; that no overtime was worked by any of the claimants here involved; 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 Employes in the instant case is entirely without basis or justification.

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

(Exhibits not Reproduced.)

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

This case was presented at the same time as Docket CL-4159, Award 4163, between the same parties, and presents practically the same fact situation and, likewise, the same contentions and citation of awards, digest of the same, etc. It relates to the same general situation: the Organization's contention of violation of Rule 50 of the Agreement by the Carrier. The award in that case denied the claim.

The Carrier, as in Award 4163, relies on the historical background of the creation of the positions in question and the Letter Agreement of October 13, 1940; also, on the same awards as cited in support of its position in Award 4163.

The Organization likewise relies on the same contentions in support of its claim as previously made in the preceding claim, that of Clerk H. H. Marty, in the case of claimant herein, Mr. W. W. Cox in subdivision (b) of the claim; also, claim of Mr. J. L. Seymour, subdivision (c) of the claim. However, the claim of Clerk Seymour relates to overtime pay. It is con-

tended that a distinction exists as between position of accountant ticket seller and ticket seller, and as request was made by supervising official to give Mr. Seymour overtime work which the Carrier refused to do, it follows that he was entitled to pay for the overtime not performed which should have been agreed to by the Carrier. The contention is not well founded.

Again, it is pointed out, as in Award 4163, that the historical background of the wage rate for this position since its creation has been the same. The Letter Agreement of October 13, 1940 makes the change, not in the wage rate but in the assignment of duties from 365 to 306 days, and the corresponding adjustment of the yearly wage to protect loss in earnings on an annual basis.

In view of previous awards cited in Award 4163 and the findings therein, the claim must be denied.

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 there was no violation of the Agreement by the Carrier.

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.