Award No. 4311
Docket No. CL-4194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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 RAILWAY CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGAR-LAND 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 McAllen, Texas, in December, 1945 when it established a position of Trucker with rate of 58¢ per hour and an annual assignment of 306 days. Also,

(b) Claim that Carrier be required to increase the rate to .692 cents per hour retroactive to date position was created, plus subsequent general wage increases. Also,

(c) Claim that all employes involved in or affected by the incorrect rate having been applied be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: For many years the Carrier has maintained a position of Trucker at McAllen, Texas with an annual assignment of 365 days. This 365 day annual assignment due to the position handling mail and baggage from trains and being considered as necessary to the continuous operation of the Carrier.

annual assignments and are so assigned at this time. Trucker positions at larger stations whose duties are to handle freight shipments exclusively are in no cases, except by special agreements, assigned to work 365 days per year.

In support of the position of the Carrier in this case, attention has been directed to Award No. 3420 (BRC vs. I-GN) covering a situation somewhat similar to the contention of the Employes in the instant case. In the case covered by Award No. 3420 a clerical position which was originally assigned to work 365 days per year was subsequently reduced to an assignment of 306 days per year, thereby inflating the daily rate so that the annual earnings would remain the same for the 306 day annual assignment as it was for the annual assignment of 365 days. This was done under the provisions of the Letter Agreement of October 13, 1940, quoted in a preceding paragraph of Carrier's position. This position was later abolished and the remaining duties assigned to three clerical positions of same classifications, one which carried an annual assignment of 365 days and the other two 306 days. The daily rate of pay of those three positions was the same (at that time $8.26 per day), while the rate of the No. 4 position in that case, was, at that time, $9.85 per day, as a result of having been reduced from a 365 day to a 306 day annual assignment, but when the No. 4 position was established the rate was $8.26 per day, the same as positions Nos. 1, 2 and 3. The Employees' contention in the case covered by Award No. 3420 was that Rules 50 and 52 were violated, therefore, it is natural for the Carrier to assume that it is their contention in the instant case that Rules 51 and 52 were violated, but it is only an assumption, because, as heretofore shown, the Employes, for reasons unknown by the Carrier, failed to cite any particular rule that was violated. In the handling of this claim, as well as in their Statement of Claim to your Board, they merely state that the agreement was violated. Therefore, we necessarily have to assume that it is their contention that Rules Nos. 51 and 52 were violated; also the Letter Agreement of October 13, 1940; as Rule No. 51 covers new positions and Rule No. 52 covers adjustment of rates.

When due consideration is given to all facts and circumstances involved in the case under consideration, specifically, the fact that neither Rules 51 and 52, nor the Letter Agreement of October 13, 1940, were violated in view of the fact that when the temporary position of Trucker was established at McAllen, at the rate of 58¢ per hour, the rate was in conformity with wages for similar kind or class in the seniority district where created and while a new position was created under the same title covering relatively the same class of work, the rate of pay was not reduced, it was established at the same rate of pay as shown on Bulletin No. 267, attached as Carrier's Exhibit "B". Carrier's Exhibit "A", copy of Bulletin No. 43 advertising vacancy on the No. 1 position which has an annual assignment of 365 days, does show the rate of the position 48¢ per hour, however, as heretofore shown, this was the rate in effect prior to December 27, 1943, at which time a general wage increase of 10¢ per hour was granted this class of employes, thereby increasing the rate to 58¢ per hour and which rate was in effect November 7, 1945, the date that the temporary position of Trucker No. 2 was created. The Letter Agreement of October 13, 1940 is not applicable in the case here under consideration, as the position established at McAllen had not, prior to November 7, 1945, been in existence. Therefore, it could not have been reduced from a 365 to a 306 day annual assignment.

The Carrier submits that it has conclusively established that its action in establishing the temporary Trucker position at the rate of 58¢ per hour and an annual assignment of 306 days did not in any way constitute a violation of the current Agreement, and, therefore, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In December, 1945 at McAllen, Texas, carrier established a new position of Trucker at an hourly rate of 58¢ per hour on a 306-day assignment. At the time and at the same station, there existed

a position of trucker assigned 365 days per year which position was considered necessary to the continuous operation of the carrier and also rated at 58¢ per hour. Employes contend that under Rule 51-a of the Agreement effective November 29, 1944, and letter agreement of October 13, 1940, the rate of the new position should be .692 cents per hour. Rule 51-a provides that wages for new positions shall be in conformity with wages for positions of similar kind or class in the seniority district where created and the letter agreement of October 13, 1940 provided that all 365 day assignments, not necessary to the continuous operation of the carrier would be reduced to 306 days and that the daily rate would be adjusted so that the earnings of the position would be the same as received for 365 days.

Employes place considerable reliance on Award 3165, asserting that this is an identical case and under the precedent set thereby this claim should be allowed. We have meticulously examined the master file in that case and find that the factual situation therein involved differs from that presented herein. There, an excepted position was on a 365-day assignment and the carrier established a like position, not accepted, on a 306-day assignment at the same daily rate as the excepted position. The referee in that case held that the rate should be adjusted upward by using the 306 divisor on the annual earnings of the excepted position. In the Opinion it was pointed out that the excepted position was excepted from the Call, Overtime, and Sunday and holiday rule and consequently might be assigned on a 365-day basis without a contractual violation. The referee further stated that if the excepted position were brought within the agreement, it would be subject to conversion to a 306-day annual assignment at a rate of pay neither more nor less favorable than the rate then in effect. He, therefore, concluded that the claimant would be entitled to the same rate as the occupant of the excepted position would receive if he were brought within the agreement, which rate would be arrived at by applying the conversion rule (Rule 48) of the agreement. In the instant case, the older position of trucker is on a 365-day basis, not because of any exception to the rules of the Agreement, but because it is necessary to the continuous operation of the carrier and Rule 48 is in no way involved.

What effect then does the letter agreement of October 13, 1940, have upon the application of Rule 51-a to the new position of trucker. In our opinion, none. It has been said in many awards dealing with the letter agreement that its purpose and intent was to effect the reduction of 365-day positions not necessary to the continuous operation of the carrier to 306-days, and at the same time to protect the occupants of such positions in their annual earnings. To uphold the Employes' contention in this instance would result in a perversion of the terms of that Agreement in requiring that the rate of a new position not necessary to the continuous operation of the Carrier on a 306-day assignment, should be so set that its annual earnings shall be the same as that of an existing position necessary to the continuous operation of the carrier on a 365-day assignment. We hold that such result was neither contemplated nor intended by the letter agreement of October 13, 1940.

We believe that this reasoning is supported by the holdings of this Board in Awards 3420, 3550, 3762 and 4163. It is worthy of note that Award 3550 was made by the Board with the same referee sitting as a member thereof as in 3165, which fact we feel lends further support to our reasoning with respect to both the effect of the letter agreement of October 13, 1940 on Rule 51-a, and the distinguishing features of Award 3165 and the instant case.

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 Carirer 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.