

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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 AND
NORTHWESTERN RR. CO., IBERIA, ST. MARY & EASTERN
RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW
ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTH-
ERN 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 is violating the Clerks' Agreement at San Antonio,
Texas by requiring or permitting the Order Clerk to rate and bill outbound
shipments on Sundays and holidays. Also

(b) Claim that the Chief Bill Clerk be paid one day's pay, at the rate
of time and one-half, for each Sunday and holiday retroactive to October
17, 1947.

EMPLOYES' STATEMENT OF FACTS: On June 10, 1946 Mr. J. B.
Sweeney, former Chief Bill Clerk at San Antonio, filed claim with the Super-
intendent because of the Order Clerk performing rating and billing on Sun-
days and holidays which work was performed by the Chief Bill Clerk on
other days of the week.

On August 1, 1946 Mr. Sweeney traced the Superintendent for a reply
and on August 2, 1946 the Superintendent advised that—"have not com-
pleted my handling."

On August 9, 1946 the Superintendent wrote Mr. Sweeney and stated:

"See no violation of Rule 45, Section B, of the Agreement in
connection with duties performed by Order Clerk, San Antonio
Freight Station, on Sundays."

of eight hours in any day is actually performed. The overtime rule has no application where only the right to perform work is involved."

The following pertinent facts of record not only support the position of the Carrier, but require denial of the Employees' contention and claim set forth in paragraph (a) and (b) of their Statement of Claim:

(1) The billing of freight was specifically assigned to the order clerk as a part of the recognized duties of that position immediately subsequent to disposal of the previous similar claim which ended by mutual agreement between the parties by payment of that claim (\$952.50) to and including October 14, 1947, and concurrently therewith assigning the billing of freight to the position of order clerk.

(2) There is nothing in the Clerks' Agreement requiring that the occupant of a position must every day in the week perform each and every miscellaneous duty assigned to his position. Since the work in question was assigned to the order clerk position by mutual agreement the occupant of that position may, under the provisions of Rule 45 (b) of the Clerks' Agreement, perform that work on Sundays and holidays regardless of whether or not he performed it on other days of the week.

(3) The actual billing of freight is not specifically assigned to the chief bill clerk as evidenced by Exhibits "E" and "F".

(4) The claim presented in favor of the chief bill clerk is not consistent with the manner in which the previous claim was disposed of by mutual agreement on basis of the bill clerk's rate, not the chief bill clerk's rate.

(5) The claim as presented for the chief bill clerk for payment at time and one-half rate is contrary to previous decisions of your Board in Awards cited above.

(6) The use of the Order Clerk to perform billing on Sundays and holidays is supported by Award 3761 cited above covering a previous case on this property.

Exhibits not reproduced.

OPINION OF BOARD: The case involves a claim under Rule 45 (b) providing:

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

On June 10, 1946, the Chief Bill Clerk first made a claim for pay because of the performance of billing work by the Order Clerk on Sundays. On October 16, 1947, the Carrier assigned to the Order Clerk the duty of performing billing "on week days and on Sundays." Subsequent negotiations resulted in settlement of that claim on March 5, 1948, by payment to the Chief Bill Clerk on the basis of the Bill Clerk's rate for the period June 10, 1946 to October 16, 1947. The correspondence thereon refers to the latter date as being the time when "the irregularity giving rise" to the claim was corrected.

On July 22, 1948, the Organization gave notice, by letter to the Carrier, of reinstatement of the claim because "the situation has never been corrected."

Careful consideration of the record leads us to conclude that the settlement agreement terminated compensation under the claim after October 16, 1947, on the basis that assignment of billing to the Order Clerk "on week days and on Sundays" placed him within the group of "employees regularly assigned to (that) class of work" as contemplated by Rule 45 (b).

It fairly appears from the record that since October 16, 1947, the Order Clerk has occasionally performed a small amount of billing on week days

but not with any regularity. On that basis the Order Clerk was not an employee regularly assigned to such class of work under our consistent decisions. We have interpreted the phrase "regularly assigned to class of work" to refer to employees who perform such work regularly. See our Award No. 1630 involving the same parties and the same phraseology. Such phrase does not include an employee whose position carries an assignment to "bill freight" but who performs it only spasmodically or irregularly.

Our Award No. 3761, cited by the Carrier, is not inconsistent since the employee there found to be one regularly assigned to the class of work actually performed it for one hour each day.

Our interpretive rulings on this subject were made prior to the settlement agreement here involved and since it made no provision to the contrary it does not alter our interpretation of the rule involved. Hence such agreement affords no protection to the Carrier in the assignment of extra time on Sunday to an employee not regularly assigned to perform the class of work involved.

The position of Order Clerk is a six-day assignment and he receives the time and one-half premium rate for his work on Sunday. Hence this is not a case of the performance of work within the regular tour of duty of an employee whose position carries an assignment of the duty of perform such work. Instead it is "extra time on Sundays" governed by Rule 45 (b) whereby preference in its performance must be given to employees "regularly assigned" to that class of work.

There is no justification for claiming the Chief Bill Clerk's rate when the Carrier could and should have assigned a Bill Clerk to perform the work. The claim for time and one-half is proper since only Sunday and Holiday work is involved and whoever performed it would receive such premium rate for such days. The penalty rate for work improperly assigned is the rate which the occupant of the regular position to which it belonged would have received if he had performed it.

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 (a) is sustained. Claim (b) is sustained but at the Bill Clerk's rate only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.