

Award No. 4993

Docket No. CL-4938

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 RY. 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.; ASHORTON & 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 in December 1948, when it arbitrarily changed the weekly assignment and method of compensating the Commissary Storekeeper at Houston, Texas. Also

(b) Claim that Carrier be required to restore the weekly assignment and method of compensation provided in letter agreement of July 19, 1945. And

(c) Claim that the Commissary Storekeeper be paid an additional day's pay at the rate of time and one-half for each alternate Sunday and holiday he has been required to work since December 12, 1948.

EMPLOYEES' STATEMENT OF FACTS: On July 19, 1945, the Carrier and Organization entered into an agreement to be effective August 1, 1945, which provided that the Commissary Storekeeper would work only every other Sunday and holiday, and that he would "be paid at the straight time rate for the Sundays and holidays not worked, and at the rate of time and one-half for the Sundays and holidays they work."

The above referred to agreement also specifically provided that it would "continue in effect until it is cancelled or changed as provided for in the Railway Labor Act, as amended."

In Paragraph (c) of their ex parte Statement of Claim the Employees contend that the Commissary Storekeeper should be paid an additional day's pay at the rate of time and one-half over and above the payment he has received at the time and one-half rate, for each alternate Sunday and holiday he has been required to work since December 12, 1948. The obvious unreasonableness of this claim is emphasized when considered in light of the following that would result from such a payment.

As has previously been shown, effective with the arrangement subsequent to December 12, 1948, the daily rate of the Storekeeper was increased from \$9.99 to \$10.48, an increase of 49 cents per day. Prior to December 12, 1948 the Storekeeper worked every other Sunday and holiday for which he was paid at the time and one-half rate of his \$9.99 per-day position, or \$14.985, and at the straight time rate of his position for every other Sunday and holiday he did not work. Subsequently to December 12, 1948 (and until September 1, 1948 when, following inauguration of the 40-Hour-Work-Week the assignments of most positions, including this one, were reduced to five days per week) he has worked each Sunday and holiday for which he has been compensated at the time and one-half rate of his \$10.48-per-day position or \$15.72.

Taking, for an example, a month in which only four Sundays occur, to compensate the Storekeeper as contended for by the Employees in paragraph (c) of their claim would result in the Carrier allowing the equivalent of nine days' pay for but four days' work, viz: for two of those four Sundays the Carrier would allow the equivalent of three days' pay, i.e., a day and a half for each of them; on the other two Sundays the Carrier would allow the equivalent of six days' pay, i.e., the three days already paid—a day and a half for each of them, and, in addition thereto, another day and a half for these same two Sundays. Therefore, the net result would be the payment of the equivalent of three days' pay for two Sundays, six days' pay for the other two Sundays, or a total of nine days' pay for four days' work to this one employee.

There is no provision in the Letter Agreement of July 19, 1945 that remotely specifies or implies that such any such payments as claimed were contemplated by the two parties making this agreement or that requires the payment of this claim which would result in the equivalent of three days pay for every other Sunday and holiday.

It is not believed that your Board will, or consistently can, justify the payment, as shown above, of nine days' pay for four days' work to this, or any other, one employee. Certainly the Carrier cannot and it is for this reason that the Employees' claim has been denied. For the same reason it is the position of the Carrier that your Board should also deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 19, 1945, a Letter Agreement was entered into, effective August 1, 1945, which provided in part as follows:

"It was agreed in conference last night that the Commissary Clerk at Houston would be reassigned on 365 day basis at the rate of \$7.76 per day and would alternate on Sundays and holidays with the Commissary Storekeeper and be paid at the straight time rate for the Sundays and holidays not worked and at the rate of time and one-half for the Sundays and holidays they work.

* * * * *

"This agreement will be effective August 1, 1945, and continue in effect until it is cancelled or changed as provided for in the Railway Labor Act, as amended."

On December 12, 1948, the position of Commissary Clerk was abolished and the Commissary Storekeeper was required to work all Sundays and holidays.

The Carrier by changing the weekly assignment and method of compensating the Commissary Storekeeper without negotiation with the Clerks' Organization violated the Letter Agreement, effective August 1, 1945, providing that such Letter Agreement, would remain in effect until cancelled or changed as provided in the Railway Labor Act.

The Carrier has paid an additional one-half time to the Commissary Storekeeper for the additional Sundays and holidays he has worked since the position of Commissary Clerk was abolished. The Carrier contends that this is full compensation as provided by the Letter Agreement.

The position of the Organization is the correct one. It is very evident that the payment of the pro rata rate for Sundays not worked was one factor employed to determine the rate of pay of the employees involved. It was not pay for work performed because no work was performed or contemplated. Consequently, the performance of Sunday work by the Commissary Storekeeper on Sundays assigned to the Commissary Clerk by the Letter Agreement, requires that he be paid the time and one-half rate for such work over and above the compensation received under the assignment as agreed upon in the Letter Agreement. Payment of time and one-half for such Sunday work is required in addition to the straight time for not working until the violation of the Letter Agreement is corrected.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4993

Docket CL-4938

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: 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 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).

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

It was determined by our award in this case that the Commissary Storekeeper at Houston, Texas, was entitled to be paid the pro rata rate for alternate Sundays which he did not work under his assignment and the time and one-half rate for the alternate Sundays that he did work, in addition to the pro rata rate for work the six week days in each week. This was the rate of the position negotiated by the parties by the letter agreement of July 19, 1945. Thereafter the Carrier required the Commissary Storekeeper to work the alternate Sundays that he was not required to work under his regular assignment. This was Sunday work which was outside his regular assignment. For working on Sundays outside his regular assignment the Commissary Storekeeper was entitled to receive the time and one-half rate in addition to the full amount he received for working his regular assignment. We consequently held that time and one-half should be paid for working the alternate Sundays which were outside the regular assignment and which would be in addition to all compensation received for working his regular assignment under the terms of the letter agreement. The Carrier made the wage adjustment required by this Board's Award No. 4993 from December 12, 1948, the date of the first violation, to August 29, 1949, the alleged date of the last violation of the Letter Agreement.

It is the position of the Carrier that the Letter Agreement of July 19, 1945, was superseded by the Agreement effective September 1, 1949, commonly referred to as the Forty Hour Week Agreement. We concur with the position of the Carrier. The Agreement effective September 1, 1949, specifically provided:

"(a) This agreement shall be effective September 1, 1949, superseding all other rules, agreements, practices and understandings in conflict herewith, and shall continue in effect for a period of one

(1) year and thereafter until changed as provided herein or in accordance with the provisions of the Railway Labor Act." Rule 72 (a), Current Agreement.

The language of the foregoing rule is plain and definite in its meaning and therefore not subject to construction. It supersedes the Letter Agreement of July 19, 1945, and renders it nugatory for all purposes.

It is contended by the Organization that the Letter Agreement was preserved and continued in force by Article II, Section 2 (a) of the Forty Hour Week Agreement of March 19, 1949, wherein it is said:

"All daily and hourly differentials, arbitraries and special allowances shall likewise be increased by twenty percent; monthly and weekly compensation of that character on the basis of six work days per week shall remain unchanged when the work week is reduced to five days * * *."

The substance of the foregoing provision was incorporated into Rule 48 (c) of the Agreement effective September 1, 1949. The present dispute does not involve a daily or hourly differential, an arbitrary, or a special allowance. It involves the daily assignment and compensation of an employee, a subject dealt with by the subsequent Agreement of September 1, 1949, providing for the forty hour week and the compensation to be paid. Its provisions abolished the Letter Agreement in conflict therewith. The Carrier was therefore required to pay reparations arising under the Letter Agreement during the period that it was in force. The award here involved is satisfied, therefore, if the payments are made for violations from December 12, 1948, to August 28, 1949, inclusive. If a dispute exists as of September 1, 1949, or subsequent thereto, concerning the assignment of the Commissary Storekeeper or his rate of compensation, it poses a new question under the Agreement of September 1, 1949, that cannot here be considered. The interpretation for which the Organization contends is without merit.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 4993 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of January, 1951.