

Award No. 5198
Docket No. CL-5182

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY CO.

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

(a) Carrier violated the provisions of the current Clerks' Agreement when it required Mr. W. B. Apperson, successful applicant of Cashier position, Paris, Texas, to report for duty on that position on June 30, 1947, and failed and refused to compensate him for such service; and,

(b) W. B. Apperson be paid for eight (8) hours at pro rata rate for work performed at Paris, Texas, June 30, 1947, at the rate of \$9.36 per day; and,

(c) W. B. Apperson be paid for two (2) hours at punitive rate for work performed outside of his assigned hours on June 30, 1947, at Paris, Texas, at the rate of \$9.36 per day.

EMPLOYES' STATEMENT OF FACTS: On June 20, 1947, Mr. O. D. Crill, Superintendent, Fort Worth, Texas, issued Bulletin No. 66 advertising Freight Cashier Position No. 496 at Paris, Texas, Joint Agency, reading as follows:

"Fort Worth, June 20, 1947

BULLETIN No. 66

**ALL CLERICAL EMPLOYES—STATION SERVICE Northern
Division**

Effective July 1, 1947, account this Company taking over the operation of the Paris, Texas, joint agency, there will be a vacancy for Freight Cashier, Position No. 496, at that point; assigned hours, 8 A. M. to 5 P. M. with one hour off for lunch daily, except Sundays and holidays; rate, \$9.53 per day to those who have completed 18 or more months' previous clerical experience.

The duties of this position consist of handling freight accounts, cash book, collections, rate work, mailing notices, preparing various reports, and other duties usually performed by a cashier for both railroads using this station, and such other duties as may be assigned.

with the hope of securing an award which would have the effect of establishing a rule which would require double payment, i.e., payment to both the incoming and the outgoing employe for any day on which a joint check of accounts is made in connection with changes in personnel on Cashier's positions. Such handling is directly contrary to the intent of the Railway Labor Act which clearly contemplates in Section 6 that any changes in "rules, or working conditions," shall be subject to negotiations between the parties.

This Board has held in numerous awards that it does not have the authority to grant new rules, see Third Division Awards 1399, 1687, 2029 and 2436. The following from Opinion of Board in Award 2436 is particularly applicable:

"It is fundamental that a practice once established remains such unless specifically abrogated by the contract of the parties. It seems to us, therefore, that the only question remaining is whether these specified practices have been abrogated by the various collective agreements made by the parties to this dispute."

CONCLUSION

In conclusion, the Carrier submits it has proved

- (1) that the claim in this docket is without merit under the current agreement;
- (2) that the employes are seeking through the medium of this claim to effect a change in the established rules and working conditions affecting employes;
- (3) that a sustaining award by this Board would have the effect of establishing such new rule or working conditions which is not within the province of the Board but is a matter reserved solely to negotiation between the parties by the provisions of the Railway Labor Act.

and the claim should, accordingly, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends Carrier violated the provisions of the Clerks' Agreement when it required W. B. Apperson to report for duty as Cashier at Paris, Texas, on June 30, 1947, and failed to compensate him for such service. It asks that Carrier be required to pay claimant for eight hours at pro rata and two hours at time and one-half the rate of the position.

The freight and passenger depot at Paris, Texas, is jointly owned and operated by this Carrier and the St. Louis, San Francisco and Texas Railway Company. As of July 1, 1947 it became the duty of this Carrier to begin operating it for a period of five years. As a consequence thereof it bulletined the position of Freight Cashier at Paris, Texas, with hours 8:00 A. M. to 5:00 P. M., one hour off for lunch, to become effective July 1, 1947. Claimant who at the time was an Assistant Freight Cashier of this Carrier at Fort Worth, Texas, successfully bid on the job. On June 27, 1947, Superintendent Crill requested the Agent at Fort Worth to relieve claimant with the close of business on Saturday, June 28, 1947, which the Agent did. The Superintendent also instructed claimant to report at Paris, Texas, on the job of Freight Cashier on Monday, June 30, 1947, for the purpose of being checked in, which claimant did.

While the position to which claimant was assigned did not, according to the bulletin, become effective until July 1, 1947, however, Carrier required claimant to report on that job on June 30, 1947, which instructions claimant was not in a position to ignore. He did so report and therefore entitled to the benefits of Article VI, Section 1 of the parties' Agreement.

Article VI, Section 1 is a specific rule covering what shall constitute a day's work when an employe regularly assigned is required to report for duty pursuant thereto. When rules conflict with former practices such practices are abrogated. If Carrier wanted an exception to this rule when such employe is required to report on his assignment for the purpose of checking in, it should have provided for such an exception in the Agreement. Claims (a) and (b) should be sustained.

The record does not show that the work claimant was directed to perform required him to work after 5:00 P. M. nor does it show that anyone in authority directed him to do so. In the absence thereof we find claim (c) to be without merit. See Article VII, Section 4 of the parties' Agreement.

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 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 Carrier violated the Agreement.

AWARD

Claims (a) and (b) sustained. Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.