

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

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

(a) Carrier violated the current Clerks' Agreement when on September 1, 1949, it failed to include the Sunday assignment on Position No. 117, Cameron, Texas, in a relief position and, instead, required the occupant of Position No. 117 to work three (3) hours, 1:00 A. M. to 4:00 A. M., on each Sunday, one of his assigned rest days, to sell tickets and work passenger trains; and,

(b) The Sunday assignment of Position No. 117, Cameron, Texas, shall be for eight (8) hours instead of three (3) hours; and,

(c) R. G. McLeod and/or other employees occupying Position No. 117, Cameron, Texas, and required to work the short assignment on Sunday, shall be paid eight (8) hours at time and one-half rate of the position, less what they have been paid for Sunday assignment on Position No. 117 for each Sunday from September 1, 1949, until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, Clerk Position No. 117, Cameron, Texas, which position is assigned to sell tickets and work passenger trains, was classified as a position necessary to the continuous operation of the Carrier and assigned 9:30 P. M. to 6:30 A. M., with one (1) hour meal period, seven (7) days per week, the regular occupant thereof being assigned one regular day off duty in seven.

Effective with the inauguration of the 40-Hour Week on September 1, 1949, Carrier assigned the regular occupant of this seven (7) day position at Cameron, Texas, to eight (8) hours per day, five (5) days per week, Monday through Friday, relieving him on his Saturday rest day each week by the use of a regular assigned relief employee, but requiring him to regularly report for duty and work three (3) hours, 1:00 A. M. to 4:00 A. M. on each and every one of his Sunday rest days. It will thus be seen that this employee has a regular assignment of forty-three (43) hours per week.

There can be no question as to whether or not the incumbent of Position No. 117 is regularly assigned to a three (3) hour tour of duty each Sun-

estoppel and hold that recovery is limited to compensation from May 2, 1947, the day on which Claimant first filed his monetary claim."

See Awards 3430, 4057, 5312, 4377, 4437, 5098, 5526 and many others.

The Board will also readily recognize that the Brotherhood's claim in the instant dispute for time and one-half in behalf of the occupants of Position 117 for five (5) hours work **not performed** on Sundays is contrary to the Board's well established principle that the right to work is not the equivalent of work performed under the overtime and call rules of an agreement.

In conclusion the Carrier submits that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules in effect between the parties and should be denied for the following reasons:

1. The handling complained of in the instant dispute is clearly contemplated and authorized by existing **agreement rules between the parties hereto**, which became effective September 1, 1949.

2. The Employees' claim is not supported by the Agreement rules presently in effect between the parties but is, on the contrary, based entirely on:

(a) Decision No. 5 of the 40-Hour Week Committee which the Carrier has conclusively shown was not applicable to the governing agreement in effect between the parties hereto; and,

(b) Agreement rules and interpretations thereof which were in effect prior to September 1, 1949 but which were eliminated by negotiation as of that date.

3. The Board is without authority to render a sustaining award in the instant dispute for the reason that it would have the effect of:

(a) Extending the scope of Decision No. 5 of the 40-Hour Week Committee to include the respondent Carrier and its Clerks' Agreement of October 1, 1942; and,

(b) Restoring to the Agreement, rules and practices which were eliminated by the national 40-Hour Week Agreement and by the parties' Supplemental Agreement of May 7, 1949, effective September 1, 1949, and would thereby constitute a revision or amendment of the governing agreement presently in effect between the parties hereto.

The Carrier is uninformed with regard to the arguments the employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude is necessary in reply to the Employees' ex parte submission and any subsequent oral arguments and briefs they may present in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, Clerk's position No. 117, at Cameron, Texas was a 7-day position, the incumbent working his rest day (Sunday) at time and one-half. As of September 1, the assignment was reduced to five days, Mondays through Fridays. Saturday work was performed by a regularly assigned relief employee. On Sundays the incumbent was called upon to work from 1:00 A.M. to 4:00 A.M. for which he was paid three hours

at time and one-half rate. He claims eight hours at time and one-half for each Sunday so used.

This case involves the same problems as Docket CL 6262, Award 6303, and the same disposition is in order.

FINDINGS: The Third Division of the Adjustment Board, 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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1953.

DISSENT TO AWARD NO. 6304, DOCKET NO. CL-6263

For the reasons set forth in our dissent to Award No. 6303, Docket No. CL-6262, we likewise dissent to this Award.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ J. E. Kemp