

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Clerk's Agreement when it failed to provide rest day relief for the Ticket Agent each Saturday. And

(b) The agreement was also violated when the Carrier failed and refused to pay the Ticket Agent a minimum of eight (8) hours at time and one-half for each Saturday beginning March 1, 1950. Also

(c) The Carrier further violated the agreement when it assigned a different starting time one day each week. Also

(d) The agreement was also violated when the Ticket Agent was required or permitted to perform each Saturday work performed by other employees Monday through Friday. Also

(e) Claim that the Ticket Agent be allowed a minimum of eight (8) hours at time and one-half for each Saturday involved. Also

(f) Claim that the Cashier and Accountant be compensated for losses resulting from the Ticket Agent performing their work on Saturdays.

EMPLOYEES' STATEMENT OF FACTS: At the time the Forty-Hour Week became effective the position of Ticket Agent was assigned and worked seven days each week.

During the period September 1, 1949 through February 28, 1950 the position was assigned six days per week (Monday through Saturday), plus 5 hours and 20 minutes on Sundays and holidays.

Beginning March 1, 1950 the position was assigned five days per week (Monday through Friday) plus 5 hours and 20 minutes each Saturday.

On or about November 19, 1953 the Saturday work was discontinued.

their work it could not be contended that they were deprived of calls, and therefore the only possible loss would be that work done by Ticket Agent Saturday diminished by that amount the work to be done by them on the following Monday, certainly a negligible amount. From what the Carrier can learn from employees in the Ticket Office the ticket cut-off referred to in Mr. Dyer's letter October 15, 1953 (Exhibit "F") requires only fifteen to twenty minutes a day and of course the matter of providing change, a function that could be taken care of by any of the employees in the ticket office, could require not more than two or three minutes for each transaction.

In conclusion Carrier wishes to point out that beginning September 1, 1949, effective date of the five-day week, the Ticket Agent's assignment did not include any Saturday or Sunday work—he was assigned Monday through Friday. He was in charge of ticket counter and office, with supervision over all the other employees there, all like him Group 1 clerks on the same seniority roster with him, and he was authorized during certain periods to devote some time to his position on certain of his rest days on a call basis, usually with a maximum of five hours and twenty minutes. Insofar as Carrier can learn, no instructions were issued by bulletin or otherwise as to what time Gentry should report for duty on those days or as to just how he should occupy his time on duty. Since he was the Ticket Agent it would seem that he was in best position to judge how he could most advantageously use these authorized calls, both as to what time he should report at his office and in what way he should discharge his duties during this time on duty. If he performed any duties on Saturdays by reason of which "the agreement was violated" over this period of more than four years, it would certainly seem that there would have been a complaint or claim prior to October, 1953. There could have been no secrecy about the practice that was being followed. At all times when Gentry was on duty, either on his regular assignment or during these calls, there were several other clerks on duty. If on Saturday Gentry did some work that the Cashier or Accountant considered improper because it was work performed by one or both of them Monday through Friday, it would certainly seem that it would be known to them on the following Monday that Gentry had performed such work; that is especially true of accounting work. But the Carrier can find no indication of a complaint or claim from either of them over this four-year period on any such basis.

As will be observed from exchanges of correspondence in Carrier's exhibits and referred to in its Statement of Facts, the matters contained in this submission have been the subject of correspondence as well as discussion in conference between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, the Ticket Agent at Houston Union Station, had a seven-day position with no relief. Effective September 1, 1949, this position was made a five-day position and assigned a regular work week, Monday to Friday. However, the Agent was required to and did perform certain necessary work on Saturdays, Sundays and holidays. Owing to a special agreement signed February 21, 1950, and effective from September 1, 1949 to February 28, 1950, the Ticket Agent worked Monday through Saturday and 5 hours and 20 minutes each Sunday, "despite the provisions contained in last sentence of Rule 43." Beginning March 1, 1950, the position was assigned five days per week, Monday through Friday, plus a minimum of 5 hours and 20 minutes each Saturday. This was done without any memorandum of agreement such as that executed February 21, 1950, to be effective only until the end of that month. The Saturday work was discontinued after the first week in November 1953. Claim (a) is that Carrier violated the Clerks' Agreement in failing to provide rest day relief for the Ticket Agent from March 1, 1950 to November 7, 1953; and Claim (b) is for eight hours' pay at time and one-half for each Saturday the Agent worked from March 1, 1950 to November 7, 1953. Carrier paid the Agent only time and one-half on a minute basis for the Saturday work, regarding this as being on a "call" basis.

Also, Carrier required the Ticket Agent to report for work at 6:30 A. M. on the Saturdays in question, whereas his regular starting time was 7:00 A. M.

Rule 37 (c) of the parties' Agreement provides, in part, that,

"(c-1) GENERAL—The Carrier will establish effective September 1, 1949, for all employees, subject to the exceptions contained in this agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. This agreement is subject to the following provisions:

(c-2) FIVE-DAY POSITIONS—On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

* * * *

(d-5) SERVICE ON REST DAYS—Service rendered by employees on their assigned rest days shall be paid for under Rule 43 unless relieving an employee assigned to such day . . ."

Rule 43, provides in part that,

" . . . Employees called regularly to perform work on Sundays and specified holidays, shall be allowed a minimum of eight (8) hours at time and one-half."

Since the introduction of the five day week, this latter rule has come to be applied to the employees' rest days generally. In Award 7084, after quoting Rule 43 in full, we made the following observation:

"That rule establishes the minimum pay allowance for three situations, to-wit, (1) employees called to work not continuous with but before or after their assigned hours, (2) employees called sporadically on Sundays or holidays, and (3) employees called regularly on Sundays or holidays. Since Sundays were generally the one rest day prior to September 1, 1949, referred to in Decision No. 5 of the 40-Hour Week Committee, it appears that under such decision the Sunday provisions of the call rule governing regularly recurring calls apply to both rest days, which are Saturday and Sunday in this case. Since the service here involved falls within situation No. 3 above, governed by Rule 43(b), the claim must be sustained."

The language of the concluding sentence of Rule 43 in the parties' Agreement of July 1, 1950, is essentially the same as that in Rule 43 (b) referred to in Award 7084. And since the Ticket Agent in the instant case was required to report for work regularly on Saturdays during the period in question, we must conclude that he is to be allowed a minimum of eight hours at time and one-half for each such rest day worked. Therefore, Claims (a) and (b) of the instant case must be sustained. And Claim (e) must be sustained to the extent that the Agent shall be paid the difference between what he was paid and a minimum of eight (8) hours at time and one-half for the rest days in question.

As to Claim (e), we note that while this Saturday work was regular in that it was continued over several months, it was not a part of the employee's Monday to Friday assignment. It was covered by Rule 43, which is the "Call" rule, and is distinguished from Rule 42 (a). We see no basis for making any specific award under Claim (c).

Claims (d) and (f) are not too well supported by factual evidence. It is not clear that any of the Cashier's or Accountant's work was actually required of the Ticket Agent on the Saturdays in question. Whatever work of this nature the latter may have performed was undoubtedly incidental. There is no proof in the record that Carrier **required** any work on Saturdays between March, 1950 and November 7, 1953, other than work normally performed throughout the week by the Ticket Agent. If the Agent performed occasional items normally belonging to others, he apparently did it as a courtesy and not under instructions from Carrier. We find no proper basis for sustaining these claims.

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, as stated in the Opinion.

AWARD

Claims (a), (b) and (e) sustained in accordance with the Opinion and Findings.

Claims (c), (d) and (f) denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.