

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, on the Missouri Pacific Railroad Company, that the Carrier violated the Clerks' Agreement;

1. When effective March 1st, 1941, it changed the assigned hours of station employes on the Memphis Division and reduced the hours below eight (8) per day;

- (a) Station porter, Wynne, Ark. occupied by W. J. Wood from the established and assigned hours of 3:00 A. M. to 12:00 Noon, eight (8) hours exclusive of one hour meal period, seven (7) days per week, to new and reduced hours of assignment of 3:00 A. M. to 7:00 A. M.—8:00 A. M. to 10:40 A. M., 6' 40" per day, seven (7) days per week.
- (b) Station porter, Wynne, Ark. occupied by W. Carter from the established and assigned hours of 12:30 P. M. to 9:30 P. M., eight (8) hours per day, exclusive of one hour meal period, seven (7) days per week, to new and reduced hours of assignment of 1:50 P. M. to 5:50 P. M.—6:50 P. M. to 9:30 P. M., 6' 40" per day, seven (7) days per week.
- (c) Station porter, Helena, Ark. occupied by W. L. Overton from the established and assigned hours of 3:00 P. M. to 12:00 Midnight, eight (8) hours per day, exclusive of one hour meal period, seven (7) days per week, to new and reduced hours of assignment of 4:00 P. M. to 8:00 P. M.—9:00 P. M. to 11:40 P. M., 6' 40" per day, seven (7) days per week.
- (d) Station helper, New Augusta, Ark. occupied by Carl G. Hatcher from the established and assigned hours of 4:00 A. M. to 12:00 Noon, eight (8) hours per day, six (6) days per week, Monday through Saturday, except when holidays occurred, the number of days per week was reduced by the number of such holidays, and on Sundays and holidays the occupant received two (2) calls,

- 1.....A call at 4:00 A. M.
- 2.....A call at 4:00 P. M.

for which calls he was compensated at the rate of time and one-half, (Rule 55) to new and reduced hours of assignment of 4:30 A. M. to 11:10 A. M., 6' 40" per day, six (6) days per week, Monday through Saturday, except when holidays occurred the number of days per week is reduced by the number of such holidays and on Sundays and holidays the occupant receives two (2) calls,

- 1.....A call at 4:00 A. M.
- 2.....A call at 4:00 P. M.

for which calls he is compensated at the rate of time and one-half.

- (e) Station porter, Marvell, Ark. occupied by H. B. Beckman from the established and assigned hours of 6:00 A. M. to 3:00 P. M., eight (8) hours per day, exclusive of one hour meal period, six (6) days per week, Monday through Saturday, except when holidays occurred the number of days per week was reduced by the number of such holidays and on Sundays and holidays the occupant received one (1) call, 6:00 A. M. to 8:00 A. M., for which call he was compensated at the rate of time and one-half, to new and reduced hours of assignment of 6:00 A. M. to 11:40 A. M.—1:00 P. M. to 2:00 P. M., 6' 40" per day, six (6) days per week, Monday through Saturday, except when holidays occurred the number of days per week was reduced by the number of such holidays, and on Sundays and holidays the occupant received one (1) call—6:00 A. M. to 8:00 A. M., for which call he is compensated at the rate of time and one-half, and

2. That the positions shall be restored to an assignment of eight (8) hours per day, either consecutive or exclusive of the meal period, and that the occupant or occupants of the positions involved in or affected by this violation of agreement be reimbursed for the wage loss sustained representing the difference in amount received at .36¢ per hour for six hours and forty minutes (6' 40") per day and eight (8) hours per day at .36¢ per hour, or .48¢ per day retroactive to and including March 1st, 1941.

EMPLOYEES' STATEMENT OF FACTS: The positions involved in this dispute were regularly assigned and were established pursuant to the rules of the clerks' agreement on the Missouri Pacific Railroad Company dated August 1st, 1926, which establishment included the bulletining and assignment of employees to same as provided in Rule 10 of the current clerks' agreement. The assignments stipulated the hours to be worked each day as either eight (8) consecutive hours or eight (8) hours exclusive of the meal period.

In the event of changes in the occupant of any position here involved, except in instances of a senior employee exercising seniority rights over a junior employee, the vacancy thus created has in every instance without exception been bulletined to work eight (8) hours per day.

The employees filing application for or exercising their seniority upon said positions were assigned to work eight (8) hours and were paid for eight (8) hours each day except in the instance of six (6) day assignments when given "calls" on Sundays and holidays, and unless they laid off of their own accord prior to the completion of a full days service.

Under date of February 27th, 1941 the Division Superintendent issued a letter to division and local officers of the Memphis and Missouri Divisions, copy of which was furnished the Division Chairman of the clerks, Mr. T. J. Crowley of the Memphis Division, (Exhibit "A")—which among other things indicated the "reduced hours" the employees coming under the scope of the clerks' agreement, namely

to support their position that these employees be assigned and required to work eight hours exclusive of the meal period for a day's work, whereas the Carrier's position is that this rule does not say that employees MUST work eight (8) hours a day for which they shall receive as their wage for the day the wage established by agreement for a day's work. The rule reads:

"Rule 45. Except as otherwise provided in this Article eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

This rule, as is evident, is plain and not ambiguous. It says that eight hours shall constitute a day's work. Its application in conjunction with other rules of the agreement means that overtime allowances shall not begin to accrue until after eight (8) hours service in a day has been rendered. The rules of the agreement, effective August 1, 1926 do not cover rates of pay. They govern the hours of service and working conditions only of employees. Rates of pay for these positions were, as stated in Carrier's statement of facts, established by mutual agreement effective November 1, 1938 and grew out of mediation proceedings identified as United States Board of Mediation file C-337. (Exhibit "A.") There is no requirement in this agreement that the employees would be required to work eight (8) or any other number of hours to receive the wage per day established in its application.

The intent of Rule 45 of the agreement dated August 1, 1926, during the period of years (since 1926) that it had been a part of the rule governing working conditions of the employees specified in the scope rule thereof can best be demonstrated by the accepted practices thereunder of the Carrier permitting these employees to be off on Saturday afternoons in the various offices, particularly in the general office at St. Louis and the district and division offices out on the line. The employees who are permitted to be off on Saturday afternoons are not compensated for the hours they actually work on those days, which, in most instances are four, but are given a day's wage because our agreement with the Employees specifically provides they will be paid so much per day. The Carrier could, if it so elected, and if it followed the contentions of the Employees in this dispute, exact eight (8) hours service daily from the employees for the daily wage established by the agreement of November 1, 1928, but this has not been the Carrier's practice.

What the Employees are contending for in this case is seeking an award from the National Railroad Adjustment Board that would, in effect, make the Fair Labor Standards Act of 1938 a part of the agreement between the Carrier and its employees that became effective November 1, 1928 and established rates of pay for certain classes of employees. The application of this Act (Fair Labor Standards Act) is, we feel, of no concern to the National Railroad Adjustment Board under provisions of the Railway Labor Act.

The Carrier feels that it has not, as asserted by the claimants, violated the terms of its agreement covering working conditions of August 1, 1926 or rates of pay of November 1, 1928 and additions made thereto by Mediation Agreement A-395 of August 1, 1937, and that the claim of the Employees is devoid of merit and should be denied.

OPINION OF BOARD: The question involved in this case is the same as that in Docket CL-1616, Award 1803, and it must be decided in the same way.

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;

That the carrier violated the provisions of Rule 45.

AWARD

Claims 1 and 2 are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.