

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When at 12:30 P. M. on Sundays, September 21 and 28 and October 5, 1947, it called out Yard Clerk E. Vaughn, rate \$8.63, regularly assigned 2:30 P. M. to 10:30 P. M., rest day, Thursday, Jefferson City, Missouri Yard, to perform the work ON AUTHORIZED OVERTIME, of making the yard check for the switch engine that starts to work at 2:30 P. M., which is work that comprises a part of the ordinary, normal and regularly assigned duties of Yard Clerk F. C. Bogg, rate \$9.28 per day, assigned hours, 6:30 A. M. to 2:30 P. M., Monday through Saturday.

2. That Clerk F. C. Bogg be allowed payment for a call of two hours at the punitive rate of \$1.74 per hour, or \$3.48 per day, for each of the three dates, September 21 and 28, and October 5, amount \$10.44, account Carrier's action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: At Jefferson City, Missouri Yard Office, the Missouri Pacific Railroad did, on the dates of the involved claims, employ and maintain the following clerical force:

Yard (Desk) Clerk, 8:00 A. M. to 4:00 P. M., rate \$10.03, rest day Friday.

Yard (Desk) Clerk, 4:00 P. M. to 12:00 P. M., rate \$9.28, rest day Sunday.

Yard (Desk) Clerk, 12:00 P. M. to 8:00 A. M., rate \$9.28, rest day Tuesday.

Outside Yard Clerk, 2:30 P. M. to 10:30 P. M., rate \$8.63, rest day Thursday.

Outside Yard Clerk, 10:30 P. M. to 6:30 A. M., rate \$8.63, rest day Wednesday.

Yard (6793 Report) Clerk, 6:30 A. M. to 2:30 P. M., rate \$9.28, six days per week (Sunday).

the Carrier in the instant case cannot be termed discriminatory in any manner. The Carrier did conduct itself in accordance with the expressed desire of the organization to avoid unnecessary Sunday calls and in so doing in no way infringed upon or violated the provisions of the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: At Jefferson City, Missouri, Yard Office, Carrier maintained a regularly assigned clerical force, titles of positions, assigned hours, rate of pay and days of rest being as follows:

Yard (Desk) Clerk, 8:00 A. M. to 4:00 P. M., rate \$10.03, rest day Friday.

Yard (Desk) Clerk, 4:00 P. M. to 12:00 P. M., rate \$9.28, rest day Sunday.

Yard (Desk) Clerk, 12:00 P. M. to 8:00 A. M., rate \$9.28, rest day Tuesday.

Outside Yard Clerk, 2:30 P. M. to 10:30 P. M., rate \$8.63, rest day Thursday.

Outside Yard Clerk, 10:30 P. M. to 6:30 A. M., rate \$8.63, rest day Wednesday.

Yard (6793 Report) Clerk, 6:30 A. M. to 2:30 P. M., rate \$9.28, six days per week (Sunday).

Boggs, the Claimant, was assigned to the Yard (6793 Report) Clerk position. About five and one-half hours of Boggs' day is devoted to making reports designated as the 6793 and 22 reports. The remainder of his time is devoted to making checks of the train yards and making up switch lists which is the same type of work required of the two other positions of outside yard clerk. On week days, Boggs regularly checked the yard for the switch engine going to work at 2:30 P. M. On the Sundays mentioned in the claim, one Vaughn, who worked the 2:30 to 10:30 P. M. trick as Outside Yard Clerk, was called in at 12:30 P. M. (two hours in advance of his starting time) to check the yard for the 2:30 P. M. switch engine. Employees claim that the work should have been assigned to Boggs under the seniority rule and under Rule 25 (b), which reads as follows:

"No overtime will be worked without authority of superior officer except in case of emergency when advance authority is not obtainable.

To avoid discrimination as between employees to be used on authorized overtime work, the incumbents of positions which require overtime hours will be used if possible."

Carrier submits that there was no requirement of overtime on Mr. Boggs' position and hence this claim cannot be sustained under the provision of Rule 25 (b). There may be merit in this contention. Inasmuch as three clerks were engaged during the week on checking the yard for switch engines going to work at various times during the day, we cannot feel that any one of the three had a vested right to the performance of the work of checking the yard for any particular engine. In other words, it is the incumbency of a position which requires overtime and not of a particular item of work which determines the preference for overtime work under that rule.

Under this line of reasoning, therefore, it would follow that the work of checking the yard for the 2:30 engine on the Sundays in question would not necessarily be overtime required of the position of which Bogg was the incumbent. By the same token, however, it would not be work required of the position of which Vaughn was the incumbent. Carrier admits this to all intents and purposes in its submission wherein it plainly states "Overtime hours were required of a yard clerk's position." Carrier seeks to justify its assignment to Vaughn on the basis of the fact that the work of Bogg was

primarily the handling of the 6793 report whereas the word regularly assigned to Vaughn was strictly yard-clerk work. The fact remains, however, that for a very substantial part of his day, Bogg was regularly assigned to strictly yard-clerk's work. If Rule 25 (b) did not govern the allocation of this work then the seniority provisions of the Agreement did, and therefore, it should have been assigned to Boggs by reason of his being senior to Vaughn. Carrier's contention that this work is distinguishable from ordinary overtime because of its being "Sunday" work is not tenable as is clear from the opinion of this Board in Award No. 1401, wherein it is stated:

"The argument for the Brotherhood, that Rule 45 is a Sunday and holiday and not an overtime rule, is ingenious but not persuasive.

The conclusion is inescapable that in railroading, as in industry generally, any time paid for on the overtime basis of one and one-half is considered overtime. Heretofore, that understanding has been universal."

There is a great deal of discussion in the Carrier's brief concerning the proper allocation of work of the nature involved herein if it were continuous with the work of the 10:30 P. M. to 6:30 A. M. shift or if it were immediately preceding the shift from 2:30 P. M. to the 10:30 P. M. However, that is not involved here, and we see no necessity for passing on that question in disposing of this claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.