

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

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 on March 20, 1949, it denied Claimants Clerks C. W. Pilant, M. J. Lambing, J. Bresnahan, H. E. Rhoades, R. J. Ryan and N. F. Burns the right to perform the clerical work of compiling special statement data in connection with Interstate Commerce Commission Docket 29886, to which their seniority and the provisions of the Clerks' Agreement entitled them, in violation of the Agreement, Memorandum of Understanding—Application of Rule 25(b), dated July 20, 1943;

2. Clerks C. W. Pilant, M. J. Lambing, J. Bresnahan, H. E. Rhoades R. J. Ryan and N. F. Burns shall be compensated for eight hours at punitive rate as follows:

C. W. Pilant	8 hours @ \$2.23	\$17.84
M. J. Lambing	8 hours @ \$2.13	\$17.04
J. Bresnahan	8 hours @ \$2.13	\$17.04
H. E. Rhoades	8 hours @ \$2.13	\$17.04
R. J. Ryan	8 hours @ \$2.23	\$17.84
N. F. Burns	8 hours @ \$2.23	\$17.84

account Carrier's action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: The Auditor Freight Receipts Office is a unit of the Accounting Department, Missouri Pacific Railroad, General Offices at St. Louis, Missouri. It is a seniority district within itself as provided in Rule 5 of the current Clerks' Agreement. It is sub-divided into three separate and distinct seniority rosters designated as

- Group 1 — Clerks
- Group 1-B — Machine Operators as indicated in Scope Rule 1 of the Agreement
- Group 2 — Other office and station employees such as those embraced and specifically mentioned in Group 2 of Scope Rule 1.

not concurred in by the Board, the provisions of the second paragraph do not support these claims because we have shown that the work is connected to, is associated with, adhered to the positions of the clerks used, all of which comprise the meaning of the word attach, and it is only when the special statements or work is of such a general nature it cannot be identified with any established position that the use of senior qualified employees is required.

Here is a case in which the supervisor went straight down the line according to his understanding of the Clerks' Agreement in providing force for some special work. He applied the provisions of the first paragraph of the Memorandum of Understanding to those portions of the project that in his judgment required that he do so and when he came to portions that fell under the meaning of the second paragraph, he applied the provisions of that portion of the rule to those portions of the work.

We do not believe anything presented by the Employees in the handling of this dispute on the property proves any violation of the Clerks' Agreement or Memorandum of Understanding of July 20, 1943.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the interpretation and application of a special Memorandum of Understanding which applies only to the assignment, as between seniors and incumbents, of overtime work in the Accounting Department of the General Offices of the Carrier at St. Louis, Missouri. It reads as follows:

"MEMORANDUM OF UNDERSTANDING

GOVERNING THE ASSIGNMENT OF OVERTIME WORK IN THE ACCOUNTING DEPARTMENT—GENERAL OFFICES, BY EMPLOYEES COMING WITHIN AND UNDER THE PROVISIONS OF THE AGREEMENT DATED JULY 1, 1943 BETWEEN THE MISSOURI PACIFIC RAILROAD COMPANY AND THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

APPLICATION OF RULE 25 (b).

In working overtime before or after assigned hours, employees regularly assigned will be utilized. Where overtime required involves work of more or less than the number of employees regularly assigned or utilized, senior qualified employees, regularly employed on the class or classes of work to be performed will be assigned.

When it is necessary to work employees overtime in the compilation of special statements or work not attaching specifically to any established position, senior qualified employees in the rate range comparable to rates attaching to the work to be performed will be utilized in the order of their seniority, except in instances where the senior employees do not desire the work, those next in line of seniority will be accorded the opportunity to perform same.

The Management shall have the right to designate the supervisor in charge of overtime work, regardless of seniority."

Rule 25(b) reads as follows:

"(b) 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."

The Auditor Freight Receipts Office is a unit of the Carrier's Accounting Department. The regular work of the office is segregated into 12 or

more divisions, such as Government Division, Interline Division, Statistical Division, etc., but all of the employees in the office some 310 in number, are on one seniority roster.

The overtime work in dispute consisted of work done in connection with the compilation of special statements of revenues on interline traffic for selected periods for use at a hearing before the Interstate Commerce Commission. The work was performed over several months and consumed 20 nights and 4 Sundays. The claims, however, cover only work performed on the last day which was Sunday, March 20, 1949.

In the Auditor Freight Receipts Office, all accounts relating to interline traffic westbound destined to points on the Missouri Pacific are prepared and handled in the Interline Division; all accounts rendered by other railroads, both for traffic originating on Missouri Pacific destined to points on other roads and for traffic from points beyond Missouri Pacific destined to other points beyond Missouri Pacific are handled by the Recheck Division; and the checking of rates in accordance with tariffs, classifications, etc. is handled by the Revising Division.

The data required for the Interstate Commerce Commission hearing included accounts and material that was prepared, checked or handled, by clerks in the Interline, Recheck and Revising Divisions as part of their regular duties; but the work also included, in the final stages, a sorting of work sheets into mileage blocks and the preparation of recapitulations, neither of which was anything performed by anyone in the Auditor Freight Receipts Office as part of his regular duties.

The supervisor followed a principle of incumbency in assigning the work when it involved handling data which had been previously prepared or handled as part of their regular duties, by the Interline and Recheck Divisions and when it involved the specific type of work regularly performed by the Revising Division. And he followed a principle of seniority when he considered that the type of work did not attach specifically to any established position.

There is some contention that the Claimants, who were senior employees in the office, were not qualified. But, while in the nature of the business they might have been slower, we take it that they were qualified.

The Carrier stayed with the decision made by the Supervisor and now contends essentially that Rule 25(b) applies unless the work is of such a general nature that it cannot be identified with the duties of any established position. The Employees on the other hand contend essentially that the first paragraph of the Memorandum was designed to deal only with the incumbency rights of employees to work overtime on regularly assigned work; that all of the disputed work was "Special Statement" work; and that the second paragraph of the Memorandum governs regardless of whether the special statement work specifically attached to any established position or not.

The preparation of the special statements was not a one-man job. From August, 1948, through Sunday, March 20, 1949, on 23 evenings and 9 Sundays, 20 to 30 employees worked on segregated phases of the compilation which involved a number of steps (See Carrier's Submission Exhibits J, K, L, M, N, O): **first**, entering, on work-sheets data selected from abstracts of interline way-bills received and other records which were prepared and handled as part of the regularly assigned work of established positions in the Interline and Recheck Divisions; **second**, entering rates on the same work sheets, a type of work regularly assigned to the Revising Division; and **third**, assembling the work-sheets into mileage blocks and making recapitulations, a type of work not regularly assigned to anyone in the office.

It was part of the regularly assigned duties of the employees in the Interline and Recheck Divisions to prepare abstracts of their records and

the work-sheets were no more than a slightly different kind of abstract. So also was the case with the entries made on the work-sheets by the employees in the Revising Division. Therefore while it is clear that the preparation of these work-sheets was not a regularly assigned duty, it is equally clear that this work attached specifically to established positions in the department. It is also clear that assembling the work-sheets into mileage blocks and making recapitulations was neither regularly assigned work nor was it work attaching specifically to established positions in the department.

What the Carrier did here was to assign the preparation of the work-sheets on the basis of incumbency and the rest of the work on the basis of seniority in the office.

Rule 25 (b) standing alone is a general declaration of intention to give preference to incumbents. The Memorandum, on the other hand, distributes the preference between incumbents and seniors in the office only. Since the Memorandum is simply an elaboration or interpretation of the Rule—it is entitled "Application of Rule 25(b)"—seniors get no more preference than what is specifically spelled out in the Memorandum.

The Employees' argument is fundamentally based on the proposition that the Memorandum gives senior qualified employees preference for all overtime work except work which is part of the regularly assigned duties of incumbents. If this was what was meant, it would have been of the utmost simplicity to say it so. Moreover, if this is what was meant, all clerical work outside the scope of regular assignments could be called "Special Statements" Such a conclusion would deny any operative meaning to the phrase "work attaching specifically to established positions." A conclusion which denies meaning to phrases in an agreement is a conclusion to be avoided. The word "or" is commonly used either as a correlative ("sink or swim") or to express equivalence ("violin or fiddle"). As a matter of grammar, therefore, it is reasonable to claim that the second paragraph of the Memorandum means all complications of special statements regardless of attachment, as well as all other work not specifically attaching to established positions; and it is just as reasonable to claim that it means those compilations which are not attached specifically to established positions. In the context of the Memorandum and in the setting of Rule 25(b), we conclude that those phases of the compilation which attached specifically to established positions were properly assigned to the incumbents of those positions in the order of their seniority.

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 Carrier did not violate the Memorandum of Understanding.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1951.