

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 Saturday, July 4, 1953 (holiday), it required Clerk R. A. Schirmer regularly assigned Demurrage Clerk, rate \$14.12 per day, hours 7:00 A. M. to 11:00 A. M., 12 Noon to 4:00 P. M., Saturday through Wednesday, whose rest days are Thursday and Friday, to come out and work, 9:00 A. M. to 12 Noon, on a "call" and blanked the Demurrage position, 7:00 A. M. to 9:00 A. M. and 1:00 P. M. to 4:00 P. M., and failed and refused and continued to refuse to pay Clerk Schirmer for five hours at the "overtime" rate to which he was justly entitled under Agreement provisions;

2. The Carrier shall compensate Clerk Schirmer for the five (5) hours claimed on Saturday, July 4, 1953, which he was deprived of in violation of Rule 13 (a); Rule 21, Part 1, Section (a); Rule 21, Part 2 (a) General, Rule 25 (f) and related rules of the Clerks' Agreement:

Claim 5 hours at \$2.6475 per hour, \$13.24, account Carrier's action in violation of the Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** Clerk R. A. Schirmer is listed on the Clerks' Station and Yards, Class "A" seniority roster, St. Louis Terminals, as of March 13, 1941. His seniority date in Class "B" is April 10, 1929.

On the claim date, July 4, 1953, Clerk Schirmer was the regular assigned occupant of position of Demurrage Clerk at Howard Station, St. Louis Terminals, rate \$14.12 per day, five days per week, Saturday through Wednesday, with regular assigned rest days of Thursday and Friday, on which days he was relieved by a regular assigned relief worker.

The position of Demurrage Clerk to which Clerk Schirmer was assigned is a seven day position which the Carrier had designated as one which its

reduction of work days in a work week when holidays occur and Rule 26(b) specifies the method of payment for less than a full day's work on a holiday, both of which rules were fully complied with, the rules cited by the Employees have no bearing upon the issue.

The fixed starting time of this position referred to in Rule 13(a) was in no wise affected by the use of this claimant from 9 A. M. to 12 Noon on July 4, 1953. It is obvious that if and when an assignment is reduced to four days in a work week under Rule 27(b) it has no starting time on the holiday but work on the holiday in such circumstances falls within the provisions of Rule 26(b).

Rule 21—Part 1(a) obviously cannot apply to a day on which the Carrier is not required to work a given position. Furthermore the rule does not say that less than eight hours shall constitute a day's work. The Employees are here contending that less than eight hours constitutes a day's work under a rule that clearly says it takes eight hours to make a day.

Rule 21—Part 2(a), is by its own title, a general rule, and Rule 27(b) is obviously a special rule that takes precedence over 21—Part 2(a). If the latter rule applied without exception, Rule 27(b) would be meaningless. Certainly it cannot be said that Rule 27(b) applies only to five-day positions and all others must be worked on holidays under Rule 21—Part 2(a) because there simply is no wording in the agreement to that effect and there is clearly no more need for a seven-day position seven days per week than there is for a five day position five days per week when a holiday occurs.

Rule 25(f) deals with suspension of work during regular hours to absorb overtime. Clearly a position the Carrier is not required to work on a certain day has no regular hours on such day and furthermore there was no overtime absorbed in this case.

It should be noted that General Chairman Thomas changed the claim from five hours at pro rata rate to five hours at punitive rate when he appealed the claim to Assistant General Manager Smith in his letter of September 4, 1953 (Exhibit F). The punitive rate is not a proper penalty even where a violation of the agreement does occur in view of the policy of your Board that such a penalty will not be extracted from the Carrier for the time claims where no work was performed. See Awards 2346, 2695, 2893, 2859, 3049, 3193, 3222, 3232, 3251, 3271, 3371, 3375, 3376, 3504, 3505, 3609, 3745, 3770, 3837, 3876, 3890, 3910, 4037, 4196, 4244, 4495, 4497, 4535, 4603, 4616, 4690, 4710, 4817, 4828, 4853, 4883, 4930, 4947, 5029, 5200, 5240, 5249, 5467, 5475, 5476, 5548, 5558, 5562, 5607, 5608, 5638, 5887.

This claim is not supported by the rules and is entirely without merit. It therefore should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was regularly assigned to the position of Demurrage Clerk at Howard Station, St. Louis Terminals, Saturday through Wednesday with Thursday and Friday as rest days, on which rest days he was relieved by a regularly assigned relief employee. On Friday, July 3, 1953, Carrier notified Claimant to report for work at 9:00 A. M. on Saturday, July 4, 1953, instead of his regular starting time of 7:00 A. M., and to work until 12:00 Noon only. Saturday being a regular assigned day of Claimant's work week, he claims an additional five hours at the holiday rate of time and one-half.

The Rule involved is 27 (b), which provides in part:

"Nothing herein shall be construed to permit the reduction of days for employees occupying Class A and B positions below five

per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays, and no reduction in the number of days below five per week shall be made except by agreement between the Management and General Chairman, or when reducing forces or abolishing positions in accordance with Rule 14."

It is clear that Claimant was assigned to work Saturday through Wednesday of each week and holidays were not specifically excluded by the assignment made. The question to be determined is whether or not Carrier may blank an assigned holiday and use the assigned employee on a call basis under Rule 27 (b).

The Second Division of this Board had the identical question before it in Award 1606. The Board there said: "To us this agreement means that in respect to working employees on holidays, the Carrier has two alternatives: It may work them, or it may not. But if it chooses the former alternative, it means a penalty in the form of paying time and one-half rates for the holiday hours worked." This interpretation of the rule has been followed in the following awards of this Division: Awards 5668, 6385, 6586. We are obligated to hold, therefore, under Rule 27 (b) by express exception contained therein, Carrier has the right to reduce the work days below five per week in a week in which specified holidays occur.

It was held in Award 5668 that holidays are not considered working days. Such being the case, Claimant's assignment did not require him to report for work on July 4. He could properly be notified to work the full day or be given a call. In either event the holiday rate of time and one-half applies, including the benefits contained in the call rule.

The Claimant was properly paid and no basis for an affirmative award is found.

**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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.