# Award No. 7223
# Docket No. CL-7235

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Livingston Smith—Referee**

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## 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 Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on April 13, 1954, it issued Station Bulletin No. 30 advertising for bids, Warehouse Platform clerical positions—

**At Seventh Street Warehouse:**

Receiving and Check Clerk No. 6
Receiving and Check Clerk No. 41—Nights
Receiving and Check Clerk No. 37—Nights
Platform Group No. 71—Nights (Relief Clerk)
Receiving and Check Clerk No. 13

**At Miller Street Warehouse:**

Relief Group No. 16 (Weighmaster, etc.) that relieves
Receiving and Check Clerk No. 15—Saturday
Receiving and Check Clerk No. 20—Monday
Receiving and Check Clerk No. 5
Receiving and Check Clerk No. 6

and indicated **St. Louis, Mo.** as Location, and failed and refused to show the specific location of the station where the positions are assigned to work, as contemplated and provided for in Rule 8 (b), Item 1—"**LOCATION**" and the accepted and applied construction of a proper application of the Agreement on the St. Louis Terminal Division (west of the Missisippi River) and at all Freight Station Warehouse Platforms elsewhere on the Missouri Pacific Railroad since about January 1, 1920, when Agreement provisions (Bulletin rules) of the Railroad Administration and/or the Carrier with its employes became effective;

2. That the Carrier's action be held to be in violation of Agreement provisions, that it be directed to issue corrected bulletins in lieu of Bulletin No. 30 and all such subsequent bulletins as have been improperly issued and to comply with Agreement provisions until the Agreement is changed in an orderly manner, pursuant to Rule 45 of the Agreement;

3. That all monetary claims that have arisen or which do arise as result of the Carrier's action, until this dispute is disposed of, be resolved in accordance with the decision of the Third Division, National Railroad Adjustment Board upon such claims as are now or shall hereafter be submitted to it.

**EMPLOYES' STATEMENT OF FACTS:** The National Agreement between the Director General of Railroads and employes represented thereon by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, hereinafter referred to as the "Brotherhood", effective January 1, 1920, contained BULLETIN RULE 12, which provided in part:

> "New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employes affected, for a period of five (5) days in the districts where they occur; bulletins to show **location,** title, hours of service and rate of pay." (Emphasis supplied)

The National Agreement was applicable and was given effect on the Missouri Pacific Railroad until it was supplanted by an Agreement of rules and working conditions between the Missouri Pacific Railroad Company and the employes thereon represented by the Brotherhood, effective February 1, 1922, which Agreement contained BULLETIN RULE 10 (a), which provided in part:

> "New positions or vacancies will be promptly bulletined in all offices, freight houses, station and store houses on the district where the vacancy occurs in a place accessible to all employes affected for a period of five (5) days, and Local Chairmen will be furnished with copy. **The bulletin must show location,** title, hours of service and rate of pay." (Emphasis supplied).

The Agreement effective February 1, 1922, was supplanted by an Agreement of these same parties, effective September 1, 1923, and contained BULLETIN RULE 10 (a), the provisions of which were identical with that of Rule 10 (a) of the Agreement of February 1, 1922.

The Agreement effective September 1, 1923 was supplanted by an Agreement of these same parties effective September 1, 1924, which contained BULLETIN RULE 10 (a) and it was identical with the provisions of the previous Agreement, except that the last sentence was changed to read:

> "Bulletin must show **location,** title, hours of service, **six (6) or seven (7) day position,** and rate of pay." (Emphasis supplied).

The Agreement of September 1, 1924 was supplanted by an Agreement of these same parties effective August 1, 1926 and reprint thereof of November 1, 1934, which contained BULLETIN RULE 10 (a) that was identical in its provisions with Rule 10 (a) of the Agreement of September 1, 1924.

The Agreement of August 1, 1926 and reprint thereof of November 1, 1934, was supplanted by an Agreement of these same parties, effective July 1, 1943, which contained BULLETIN RULE 8, Sections (a), (b), (c), (d), (e), (f) and (g), and Section (b) of Rule 8 provided:

> "Bulletins will be numbered consecutively beginning with the first bulletin issued in January of each year by the designated official and will show **location,** title, brief description of duties, rate of pay, assigned days and hours of service, meal period and the closing date and hour for receiving applications." (Emphasis supplied)

The Agreement of July 1, 1943 was supplanted by an Agreement effective September 1, 1952, which contains BULLETIN RULE 8, Sections (a), (b), (c), (d), (e), (f), (g), and (h) and Section (b) thereof contains the following provisions:

designated as a specific warehouse because there is no rule that prohibits transfers from assigned location to another location for temporary work during regular hours.

Long time practice which reveals the interpretation of the rules by the parties to the Agreement also precludes support for this much belated claim of violation.

Notwithstanding the position of the Carrier as outlined in the foregoing, the receipt of time claims in connection with these transfers prompted the Carrier to eliminate all doubts about the legitimacy of such action by broadening the assignments to include assistance as necessary at warehouses other than to one at which the employes report, normally work and go off duty.

We think there can be no doubt as to the Carrier's right to make such assignments. The work is all in the same seniority district and the boundaries of the district are the most restrictive work assignment limits to be found in the Agreement. Certainly there is no rule that prohibits assignment to a single position the performance of duties at more than one location in a seniority district when the incumbent thereof goes on and off duty at a designated location and is on full time pay while traveling between the two or more locations involved.

Many positions are assigned in the very manner described. We have called attention supra to positions of messengers, train clerks, assistant chief claim clerk and demurrage clerk right in the same seniority district here under consideration and pointed out that there are many others of a similar nature all over the railroad. The Carrier would be unable to get its work done without assignments of this kind. It would be, not just impracticable but, impossible to establish a position at each spot where the Carrier might require work to be done. The incumbents of some positions perform work every few feet as they cover the territory to which they are assigned. Others perform duties regularly at several locations in addition to the one where they report and go off duty.

Just as the ripples set in motion by a "coin dropped in a fountain" encounter no interruption until they reach the side of the basin, so do the waves of work assignment permitted under this Agreement have free expansion from the location of the position to the barriers of the seniority district limits. We challenge the Employes to point out any provision of the Agreement that sets up any bar short of the seniority district boundaries to such expansion of work assignments from the designated location of the position.

The Carrier holds its notice of April 7, 1954, Exhibit "A" is in no wise in violation of the Agreement and its Bulletin No. 30 of April 13, 1954 and subsequent similar ones specifying assignments in accordance with the notice are entirely proper and in accordance with its inherent rights unhampered by any prohibitive provision in the Agreement.

(Exhibits not reproduced)

**OPINION OF BOARD:** The confronting dispute concerns the allegation of Petitioners that Rule 8 (b) of the effective Agreement was violated when the Respondent on April 13, 1954, in issuing its Bulletin No. 30 covering Warehouse Platform Clerical positions, failed to comply with both the intent of said Rule and established custom and designated St. Louis, Missouri as the "location" of the positions covered by the Bulletin.

Petitioners here take the position the location of the position which is bulletined must be indicated specifically, that is, in this instance, either the Gratiot Street Station, Miller Street Station or the Seventh Street Station, since each station, as such, was, and is a separate facility or location, having been treated as such over a number of years. It was pointed out that having the added duties of "and assist in the performance of similar duties at other

warehouses in St. Louis, Mo." resulted in a denial or abridgment of an employe's prior right to select preferred stations or locations at which to work; without prior negotiation as required by Rule 45 of the effective Agreement.

The Respondent asserted that Bulletin No. 30 complied with all requirements set forth in Rule 8 (b) in that it covered positions, with corresponding duties in the St. Louis warehouse operation. It was contended by the Respondent that the bulletining of positions with a specific station as the sole location at which the duties thereof (the positions) were to be performed was contrary to prior practice of the parties in that while a location was named in such bulletins at no time had the work performance been confined to a single or specific station, but, rather, work forces had historically been interchanged between locations.

The record indicates that immediately prior to the inception of this dispute, the Respondent maintained freight stations or facilities designated as the Biddle Street, Gratiot Street and Seventh Street Stations. A short distance from the Seventh Street Station was a smaller facility from which freight was handled by the Carrier for the Republic Carloading Company. The Biddle Street Station was used by the Universal Carloading and Distributing Company jointly with the Respondent, while there was a building a short distance from the Gratiot Station occupied by the Acme Fast Freight and manned by Respondent's work forces. A new facility, known as the Miller Street Station, was built and served as a central or focal point for all of this Carrier's operations. Upon the unification of the entire freight operations of the Carrier at the Miller Street facility, the Universal Carloading and Distributing Company transferred their operations to the Seventh Street Station, while the Acme Fast Freight Company and the Republic Carloading Company transferred their operations to the Gratiot Street Station.

Rule 8 (b) enumerates what a bulletin shall contain. Of the eleven items contained therein covering the title or number of the position, assigned hours and days, rates of pay and rest days, only item (1) "location" is involved.

The question to be resolved is whether or not a specific station or facility must be designated and that if this is done whether or not work performance by an employe stationed at a specific station can be properly required at facilities other than the one designated in the bulletin.

It is evident that any definition placed upon the word "location" as it appears in Rule 8 (b) must depend upon the facts and circumstances of the particular case or matter, the geographical nature of the area involved and the custom and practice, if any, concerning the scope of prior work coverage, assignment and performance.

At least one prime purpose of a bulletin is to inform an employe as to where he is to report for and go off duty. Whether an employe's work performance is to be confined to one office or facility or a greater area can not ordinarily be said to be defined solely by the bulletin, but rather the nature of the work to be performed, and the extent to which the parties, by their application of the rule to work assignments, have limited the area of such work.

It is unquestioned that, while the Republic Carloading Company occupied a facility near the Seventh Street Station, the work forces thereof (Seventh Street) handled freight for such company and were used, when needed, at each or both the Seventh Street and Republic facilities. The same conditions prevailed at the Gratiot Street and Acme Fast Freight facilities; that is, Gratiot Street forces worked, when needed, at each location, according to the fluctuations in freight traffic. Likewise, because of similar conditions, work forces were shifted from Gratiot to Miller Street Stations to handle freight for the Respondent exclusively.

Thus the parties here have not by practice restricted performance of an employe's service to one particular point or station and the Petitioners do not contend that the distance between the three stations is either material or controlling.

What this Board said in Award 7166 is likewise applicable here:

> "* * * It is most common for employes to work away from their headquarters point. Claimants were not deprived of the privileges they gained by the exercise of their seniority, including the choice of their headquarters point, the shift to be worked, rest days assigned, rates of pay, etc. They worked their assigned hours on regularly assigned days at their regularly assigned pay. * * * The agreement does not have the effect of making the employes assigned a headquarters at a particular freight house a separate class of employes. * * *"

We conclude, therefore, that neither Rule 8 (b) nor the practice of the parties has restricted the definition of the word "location", as contained in item 1 of such rule, to cover only one station or facility.

**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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims 1, 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 2nd day of February, 1956.