

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, 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 Monday, September 20, 1954, his rest day, Route Clerk B. Fisk, Miller Street Freight Station, assigned 8 A.M. to 1 P.M.; 2 P.M. to 5 P.M., Tuesday through Saturday (six day per week position—unassigned day, Sunday; rest day, Monday) was called to work and utilized 5 hours and 20 minutes, 11:40 A.M. until 5 P.M., on a day the position was assigned to work, and was paid for 5 hours and 20 minutes, in violation of the spirit and intent of Rule 26 (a) of the current Clerks' Agreement;

2. The Carrier shall be directed by appropriate order of the National Railroad Adjustment Board to compensate Claimant Fisk for 2 hours and 40 minutes at the punitive rate of \$2.76 per hour, amount \$7.36, account Carrier's action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Clerk B. Fisk is listed on the Station and Yards Class "A" seniority roster of the St. Louis Terminal Division (west of the Mississippi River) with a date of March 16, 1920. He is the regularly assigned occupant of position of Route Clerk at Miller Street Station, St. Louis, rate \$14.72 per day, hours 8 A.M. to 1 P.M.; 2 P.M. to 5 P.M., Tuesday through Saturday, with unassigned day, Sunday; rest day, Monday.

The position acquired the status of a six-day per week one, pursuant to the provisions of Rule 21, Part 2, Section (c):

"(c) Six-day positions.

"Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday." (Underscoring supplied.)

the specified number of days per week, and not to the work week of individual employees.

“(a) General.

The work week for all employees subject to this Agreement will be 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the following provisions;”

This rule was not pursued by the General Chairman but the Carrier desires to point out that it is the rule referred to supra as the only rule guaranteeing eight hours of work on any day. We desire to here point out that this provision, particularly the Note, played a significant part in arrival at decisions in Awards 5589, 5590 and 6075 cited by the Carrier.

There is no Agreement requirement or authority for payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Before claim date, Monday, September 20, 1954, at Carrier's Miller Street Freight Office in St. Louis, Missouri, Claimant was regularly assigned for five days a week, Tuesday through Saturday (rest days Sunday and Monday), with hours 8:00 A.M. to 1:00 P.M. and 2:00 P.M. to 5 P.M., to a Route Clerk position, which was a six-day position, Monday through Saturday. The position did not work on Sundays. For the position on Mondays, Carrier had used an extra or furloughed employee or had transferred a qualified employee regularly assigned to another position.

It appears from the record that on claim date no qualified employee, extra or regular, other than Claimant, was available to work the position. Carrier notified Claimant to report as of 11:40 A.M. and worked him until 5:00 P.M., paying him at punitive rate for five hours and twenty minutes. The amount so paid was equal to that which would have been paid at the pro rata rate to another employee working the position for eight hours.

In support of claim the Employees invoke the language of Rules 13(a); 25(f); 21, Part 1(a); 21, Part 2(a); 21, Part 2(c); 21, Part 2(e); and 26(a). Carrier relies on Rules 25(e) and 26(a).

Rule 13(a) is a general rule requiring a fixed starting time for each regular assignment. The evidence of record does not establish that the position on date of claim was part of any employee's regular assignment. It cannot be concluded that Rule 13(a) is controlling here.

Rule 25(f) prohibits Carrier from requiring an employee to suspend work during the hours of his regular assignment in order to avoid the payment of overtime rates. The evidence shows that Claimant worked all the hours of his regular assignment during the work-week preceding date of claim, which was his second rest day. The work done by Claimant on date of claim was not during his regular hours. Rule 25(f) does not control here.

Rules 21, Part 1(a); 21, Part 2(a); 21, Part 2(c); and 21, Part 2(e) are general rules. It is not to be concluded that they can be interpreted to

require eight hours of work by an employe on one of his rest days if there are one or more other rules that are specifically related to the point at issue here. It is a universally recognized rule of contract construction that the specific provision prevails over and in fact enlarges upon and explains the general provision.

In this case the specific rules are Rules 25(e) and 26(a). It is to be presumed that in writing them the parties intended them not to conflict with but to explain the above-noted general rules. The specific rules are controlling for a determination of the instant claim for they deal directly with payment for services performed by employees on their assigned rest days.

Rule 26(a) says that work done by an employe on his rest day must be paid for under the "call" provisions of Rule 25(e)—which requires time and one-half on a minute basis for work in excess of two hours performed by an employe on his rest day—unless such employe is relieving another employe assigned to such day, in which case the payment of time and one-half for eight hours is required.

The question to be answered in this case, then, is whether Claimant on claim date was relieving another employe assigned for said date. The evidence of record shows that on said date the position was not part of a regular relief assignment of any employe; that no qualified extra or furloughed man or other, regular employe, was available to work the position that day; and that the position on that day was in fact not part of anyone's assignment. It must therefore be concluded that Claimant was not relieving any employe assigned to that day and that he, having been paid at punitive rate for the time he actually worked on said day, was properly compensated under specific Rules 26(a) and 25(e). The claim cannot be sustained.

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 Employe involved in this dispute are respectively carrier and employe 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.