

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 System Committee of the Brotherhood (GL-4862) that:

1. Carrier violated the Clerks' Agreement when it permitted Clerk R. W. Emanus, Alexandria, Louisiana, to move to a temporary vacancy of Check Clerk, allegedly under the provisions of Rule 9 (a), on the rest days of his regular assignment and work that position at the pro rata rate on Wednesday and Thursday, December 16 and 17, 1959, when Clerk W. E. McManemin, a senior qualified employee, was available and entitled to the authorized overtime work under Agreement provisions. Carrier's action was in violation of Rules 9 (a), 25 (b), (c), 26 (a) and related rules of the Clerks' Agreement.

2. Carrier shall be required to compensate Clerk R. W. Emanus for the difference between the pro rata rate of \$18.84 allowed and the punitive rate of \$28.26, to which he was entitled, amount \$9.42, on each day, Wednesday and Thursday, December 16 and 17, 1959, total claim \$18.84, account permitted to work on his regularly assigned rest days; and

3. The Carrier shall be required to compensate Clerk W. E. McManemin for 8 hours at the punitive rate of \$3.5325 per hour, amount \$28.26, for each day, Wednesday and Thursday, December 16 and 17, 1959, total claim \$56.52, account not permitted to work the authorized overtime, since he was the senior qualified, available employee who filed claim and was entitled to perform the work.

EMPLOYEES' STATEMENT OF FACTS: Alexandria, Louisiana, is located on what is known as the Carrier's Louisiana Division, and is located approximately 293 miles south of Little Rock, Arkansas.

On the dates of claim the Carrier maintained the following clerical force at the Freight Office and Yard Office at Alexandria, Louisiana, on the Louisiana Division Station and Yards seniority district and roster:

- (d) McManemin was not entitled to be used under the rules.
- (e) McManemin did not perform work outside his regular assignment; therefore, is not entitled to the overtime rate of pay for December 16 and 17, 1959, under the provisions of Rule 25(b).
- (f) The penalty rate for an employe wrongfully deprived of work to which entitled is the pro rata rate of pay, and not the overtime rate of pay, as claimed. See Awards cited on this point.

The Employes have failed to establish that there was a violation of the Agreement, and the Carrier respectfully requests that the Board deny the claims.

OPINION OF BOARD: Immediately prior to December 15, 1959, Claimant, R. W. Emanus, was the regularly assigned Check Clerk with work hours of 12:01 A. M. to 8:30 A. M., Monday through Friday. On December 15, 1959, he received notice that he was displaced by a senior employe effective 12:01 A. M., Wednesday, December 16, 1959. Claimant Emanus immediately exercised his seniority rights under Rule 14 (e), and displaced a junior employe on Relief Yard Clerk Position No. 4, which position had designated rest days of Wednesday and Thursday.

Claimant Emanus, on December 15, 1959, also exercised his seniority rights to a new Check Clerk position, and requested assignment to that position. The hours and the work week of the new position were identical with the hours and work week of the position from which Emanus had been replaced. Both had assigned hours 12:01 A. M. to 8:30 A. M., Monday through Friday.

Carrier assigned Emanus to the new Check Clerk position effective at 12:01 A. M. on December 16, 1959.

On December 15, 1959, Carrier sent Claimant Emanus two wires. The first, which dealt with his request to displace the junior employe on Relief Yard Clerk Position No. 4, read as follows:

"Account being displaced by A. B. Bankston at the Alexandria Freight House, this is your authority to displace V. E. Simmons on Relief Position No. 4, Alexandria Yard, effective Friday, December 18th. M-45."

The second was in response to Emanus' request to fill the new Check Clerk position. This wire read:

"This is your authority to oldhead 12:01 A. M., Warehouse Clerk Position pending bid and assignment. M-53."

It is obvious that Claimant Emanus could not have occupied both Relief Position No. 4 and the new Check Clerk position on December 16, 1959. Since he requested assignment to the Check Clerk position after he exercised his right to displace the junior employe on Relief Position No. 4, it is a proper assumption that he preferred the Check Clerk position, and the Carrier complied with that request.

Petitioner contends that Carrier violated Rule 9 (a) when it permitted Claimant Emanus to work the Check Clerk position on the rest days of Relief Position No. 4. Rule 9 (a), in part, says:

"1. The employe making application to move will not be permitted to begin work on the temporary vacancy on either of the rest days of the position occupied at the time he makes the request." (Emphasis ours.)

Claimant Emanus did not occupy Relief Position No. 4 on December 15, 1959. While he was authorized to displace the junior employe in that position on December 18, he did not occupy it for the purpose and intent of Rule 9 (a).

The purpose and intent of Rule 9 (a) is to permit employes to fill temporary vacancies within the provisions of Rule 14. Rule 14 (e) says:

"(e) Employes actually displaced account position abolished or through the exercise of seniority by senior employes, must exercise their seniority rights (subject to the fitness and ability provisions of Rules 4 and 7) over junior employes by assuming the duties and hours of assignment of the position sought, or by designation of record, copy to the Division Chairman. . . ." (Emphasis ours.)

Claimant Emanus did not assume the duties of Relief Position No. 4. Further, he chose assignment to the new Check Clerk position. By so doing, he could not have assumed the duties of Relief Position No. 4.

Since Claimant Emanus was properly assigned to the new Check Clerk position on December 16 and 17, 1959, it follows that there is no basis for the claim of Claimant McManemin.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1964.