

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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-4841) that:

1. Carrier violated the Clerks' Agreement when, on Monday, August 3, 1959, it moved Clerk Mrs. Dorothy Covington from her regular assignment of Yard Clerk at McGehee, Arkansas, on the Louisiana Division Station and Yards seniority roster, to the position of Trainmaster's Clerk at McGehee, Arkansas, on the General Manager's Southern District seniority roster, and required her to work a vacation vacancy Monday, August 3, 1959, through Friday, August 14, 1959, and at the pro rata rate of the position moved to, in violation of Rules 3, 5, 13, 25, 26 (a) and other related rules of the Clerks' Agreement.

2. Carrier violated the Clerks' Agreement when, on Monday, August 3, 1959, it moved Clerk H. S. McDaniel from his regular assignment of Relief Yard Clerk, McGehee, Arkansas, to Yard Clerk vacancy of Mrs. Dorothy Covington and required him to work that vacancy August 3, 1959 through Friday, August 14, 1959, in violation of Rules 9, 13, 25, 26 (a) and other related rules of the Clerks' Agreement.

3. The Carrier be required to compensate Clerk Mrs. Dorothy Covington for the period Monday, August 3, 1959 through Thursday, August 13, 1959, the difference between the pro rata rate allowed and the punitive rate to which she was entitled, at the rate of the position worked, when she was required to work outside her regular assigned hours; also, the pro rata rate of her regular assignment on days she was held off her regular assignment, when she was required to lay off on the rest days of the position to which she was moved, plus the difference between the pro rata rate allowed and the punitive rate to which entitled for working on the position to which moved on days that were rest days of her regular assignment. Claims for each date are shown on Claim Statements attached and made a part hereof.

4. The Carrier be required to compensate Clerk H. S. McDaniel for the period Monday, August 3, 1959 through Friday, August 14, 1959, the difference between the pro rata rate allowed and the punitive

rate to which he was entitled, at the rate of the position worked, when he was required to work outside his regular assigned hours; also the pro rata rate of his regular assignment on days he was held off his regular assignment, when he was required to lay off on the rest days of the position to which he was moved, plus the difference between the pro rata rate allowed and the punitive rate to which entitled for working on the position to which moved on days that were rest days on his regular assignment. Claims for each date are shown on the following Claim Statements for each claimant.

CLAIM STATEMENT OF MRS. DOROTHY COVINGTON

Monday, August 3 — Difference between pro rata rate of \$20.00 allowed and the punitive rate of \$30.00, or \$10.00, less one hour, 4 P. M.—5 P. M., or \$3.75, amount of \$6.25, to which she was entitled \$ 6.25

Also, a pro rata day's pay of \$19.08 on her own position, less one hour (4 P. M.—5 P. M.) at the pro rata rate of \$2.395, amount 16.69

Tuesday, August 4 — Rest day on her own position — Difference between pro rata rate of \$20.00 allowed and punitive rate of \$30.00 to which she was entitled for working the rest day of her own position 10.00

Wednesday, August 5 — Same as August 4 10.00

Thursday, August 6 — Same as August 3 6.25
16.69

Friday, August 7 — Same as August 3 and 6 6.25
16.69

Saturday, August 8 — Rest day on Trainmaster Clerk job and she did not work, claim pro rata day on her own assignment 19.08

Sunday, August 9 — Same as August 8 19.08

Monday, August 10 — Same as August 3 6.25
16.69

Tuesday, August 11 — Same as August 4 10.00

Wednesday, August 12 — Same as August 4 and 5 10.00

Thursday, August 13 — Same as August 3, 6, 7 and 10 6.25
16.29

Total \$192.86

CLAIM STATEMENT OF H. S. McDANIEL

Monday, August 3 — Rest day on his own position, difference between pro rata rate of \$19.08 allowed and punitive rate of \$28.62 to which he was entitled account working on rest day of his own position, amount \$ 9.54

Tuesday, August 4 — Rest day on his own position and rest day on position moved to. Did not work, no claim.	
Wednesday, August 5 — Pro rata day's pay of \$18.36, not permitted to work his own assignment, 12:01 A. M.—8:00 A. M., account required to take rest day on the Covington position, amount	18.36
Thursday, August 6 — Difference between pro rata of \$19.08 allowed and the punitive rate of \$28.62 entitled to, less one hour 12 MN—1 A. M., \$3.58, amount	5.96
Account required to work outside his regular assigned hours, also claim for 7 hours at pro rata rate of his own assignment scheduled to work 12:01 A. M.—8:00 A. M., and he worked 4:00 P. M.—1:00 A. M.	16.06
Friday, August 7 — Difference between pro rata rate of \$19.08 allowed and punitive rate of \$28.62, to which he was entitled account working outside his assigned hours. He was scheduled to work 8:00 A. M. to 4:00 P. M. on his own assignment, amount	9.54
Also, a pro rata day's pay on his own position account not permitted to work it	18.36
Saturday, August 8 — Difference between pro rata rate of \$19.08 allowed and punitive rate of \$28.62 to which he was entitled for working outside of his assigned hours. He was scheduled to work 3 A. M.—12 Noon, amount	9.54
Also, a pro rata day's pay on his own position account not permitted to work it	18.36
Sunday, August 9 — Difference between pro rata rate of \$19.08 allowed and punitive rate of \$28.62 to which he was entitled for working outside his assigned hours, for one hour, 12:00 MN—1:00 A. M., account he was scheduled to work 4:00 P. M.—12:00 MN and he worked 4:00 P. M. to 1:00 A. M.	3.58
Monday, August 10 — Same as August 3	9.54
Tuesday, August 11 — Same as August 4 — No claim.	
Wednesday, August 12 — Same as August 5	18.36
Thursday, August 13 — Same as August 6	5.96
	16.06
Friday, August 14 — Same as August 7 and 8	9.54
	18.36
Total	\$187.12

was not complied with, the rule does not contain any provision for penalty if it is violated and the Board is without authority to assess penalties when none are specified in the rules. This Board has held on a number of occasions that claims must be limited to the loss suffered. Third Division Award 6417 is expressive of this principle and the following is quoted therefrom:

"Stafford, or the men assigned to the job at Indianapolis, or his brother clerks who might, conjecturally speaking, have been assigned this work have, by the Carrier's action, been deprived of duties which they might have been able to crowd into their day's work schedule, or failing that would have had a half-hour's work left over for their relief or, in the final alternative would have received one-half hour's overtime per day.

Under these circumstances we are of the opinion that there has been a technical violation of the rules resulting in no loss to the claimant and he is therefore entitled to no penalty; but we also are of the opinion that the matter should be negotiated by the parties if the Carrier does not desist from continuing the practice complained of."

Claimants in this case did not suffer any loss under Rule 9 (c) and this fact is obvious from the record regardless of the question of violation of the rules. They actually gained in compensation by reason of being moved to the higher rated positions. To sustain this claim as presented is to say that each claimant is entitled to two positions, their regular assignment and the position they desired to work. Claimants were properly detached from their regular assignments during this period when they performed relief work, and, therefore, the Overtime Rule is not applicable to the service performed.

The Employees have cited Rules 5, 13, 25 and 26 of the Agreement as support for this claim, but they have not explained the precise application of those rules to this case. Rule 5 is the Seniority Rule. Rule 13 is the Starting Time Rule. Rule 25 is the Overtime and Calls Rule. Rule 26 is the Rest Day, Holiday and Sunday Work Rule. Carrier cannot see that these rules have been violated or that they are even applicable to this situation.

Carrier's position is that claimants were properly used in line with their desires during the claim period, that there was not a violation of any of the rules of the agreement, that this manner of handling was in keeping with an established practice on the property to which the Employees have acquiesced and that neither the claimants nor any other employee suffered any loss during this claim period but actually gained because of this manner of handling. In view of these facts, Carrier respectfully requests that the claims be denied.

(Exhibits not reproduced.)

FINDINGS: The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party; and

The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-operating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 11):

"FINDINGS: (ART. V) The General Chairman of Clerks has taken the position that Assistant General Manager Elledge's letter of December 18, 1959 to the General Chairman was not in compliance with Article V of the August 21, 1954 Agreement (Rule 43 of the clerks' schedule agreement) in that it did not specifically state that the claims were denied.

Such letter stated in part:

'The manner of relieving the Trainmaster's Clerk at McGehee follows an old practice that has been in vogue at McGehee for a number of years, and I admit that it has no contract authority and it shall be my purpose to see that the Trainmaster's Clerk relief at McGehee in the future is handled in line with the agreement. * * *

In view of this move having been made to the benefit of Clerk on the station roster, I do not feel the Carrier should be penalized for something that the employes themselves do not want. I am further of the opinion that if there is any cause for the claim it would rest with an unidentified person on the Southern District roster, and my investigation along this line indicates there was no one available desiring this position, therefore, we feel the claim should be withdrawn.'

The National Disputes Committee rules that such letter in fact, denied the claims.

DECISION: The Carrier's letter of December 18, 1959 constituted a disallowance of the claims involved, in compliance with Article V of the August 21, 1954 Agreement.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

Under date of April 20, 1965 the parties jointly addressed a formal communication to the Secretary of the Third Division requesting withdrawal of this docket from further consideration by the Division, which request is hereby granted.

AWARD

Docket dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.