Award No. 16664
Docket No. TE-15741

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul & Pacific Railroad, that:

1. Agreement was violated when Agent E. J. Simpson, Howard, South Dakota, was required to suspend work on his regular assignment September 22, October 1, 2 and 8, contrary to the provisions of Schedule Rule 9(d) and required to perform agency service at a closed non-agency station (Winfred, South Dakota).

2. As a result of such violation, the Carrier shall pay Agent E. J. Simpson an additional four (4) days' pay of eight (8) hours per day at the straight time rate of $2.5528 per hour.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as Carrier, and its employes represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employes and/or Union, effective September 1, 1949, as amended and supplemented. Copies of said Agrement are available to your Board and are, by this reference, made a part hereof.

At page 69 of said Agreement, under Rule 27, the Wage Scale, are listed the positions existing at Winifred and Howard, South Dakota, on effective date of said Agreement. For ready reference the listings read:

"Station	Title	Hourly Rate
Winfred	A	$1.45
Howard	A	1.55

* * * * *"

handled by applicant's station agent located at Howard, South Dakota."

On October 1, 1959, the Carrier placed the aforequoted Commission order into effect.

Claimant E. J. Simpson is the regularly assigned occupant of the Agent position at Howard, South Dakota which is assigned 7:30 A. M. to 4:30 P. M. (1 hour out for lunch from 12:00 Noon to 1:00 P. M.) Monday through Friday with Saturday and Sunday rest days.

On Tuesday, September 22, 1964, claimant Simpson was instructed to perform service at Winfred, South Dakota, which he did during the hours of 1:25 P. M. to 4:00 P. M. (which are within his assigned hours at Howard), said service consisting of inspecting and counting the unloading of 4 prepaid carloads of sheep.

On Thursday, October 1, 1964, claimant Simpson was again instructed to perform service at Winfred, which he did during the hours of 8:00 A. M. to 10:30 A. M. (which are within his assigned hours at Howard), said service consisting of inspecting and counting the unloading of 8 prepaid carloads of sheep.

On Friday, October 2, 1964, claimant Simpson was again instructed to perform service at Winfred, which he did during the hours of 1:30 P. M. to 3:45 P. M. (which are within his assigned hours at Howard), said service consisting of inspecting and counting the unloading of 6 prepaid carloads of sheep.

On Thursday, October 8, 1964, claimant Simpson was once more instructed to perform service at Winfred, which he did during the hours of 1:30 P. M. to 4:00 P. M. (which are within his assigned hours at Howard), said service consisting of inspecting and counting the unloading of 7 prepaid carloads of sheep.

Except during the hours set forth in the preceding 4 paragraphs, claimant Simpson, on September 22, October 1, 2 and 8, 1964, performed service during his regularly assigned hours only at Howard.

In addition to receiving payment of 8 hours at the straight time rate of his Agent position at Howard on each of the dates of the instant claim, i.e., September 22, October 1, 2 and 8, 1964, claimant Simpson was allowed mileage ($4.76) for 4 round trips between Howard and Winfred.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. W. E. Waters, General Chairman, under date of December 3, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was taken off his regular assignment at Howard, South Dakota and required to perform work at a closed non-agency station. The Organization claims that this action violated Rule 9(d) of the Agreement which reads as follows:

"(d) Employes will not be required to suspend work during regular hours or to absorb overtime."

In Award 16492 in interpreting Rule 9(d) we held that the "suspension of work referred to is on the regular assignment of the involved employe." Claimant's regular assignment was at Howard, South Dakota and the Carrier violated Rule 9(d) of the Agreement in requiring him to perform work at Winfred, South Dakota.

While the Carrier has cited many awards off other properties wherein identical and similar rules have not been so interpreted, we are given no reason to alter its interpretation on this property.

The Organization has claimed in its submission that other rules of the Agreement were also violated. These alleged violations were not part of the original claim as processed on the property and are not properly before this Board for consideration.

The proper remedy in this matter is for the Carrier to pay the Claimant additional straight time for all hours worked off his regular assignment. Under the Agreement the Claimant is guaranteed one day's pay for each twenty-four hours "according to location occupied or to which entitled. . . ." During the time he was improperly suspended Claimant was not paid for those hours on his regularly assigned position.

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 the Agreement was violated by the Carrier.

AWARD

Claim sustained as per our Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16664, DOCKET TE-15741

The majority's decision to sustain the claim presented on behalf of Agent E. J. Simpson has no sound basis in fact or logic. It is, therefore, a complete nullity, without any force or effect whatsoever.

The majority, in reaching its conclusion that the Claimant was "taken off" and "improperly suspended" from his regular assignment when he was required to work at Winfred, South Dakota, on the dates in question, assumes a fact **not** established by the evidence of record: that the Claimant's regular assignment was limited in terms of geography — to Howard, South Dakota, or at least to some territory which did not include Winfred, South Dakota. Since there is nothing in the record which even remotely suggests the Claimant's regular assignment was so limited, the majority's contrary assumption is erroneous and its conclusion based thereon is invalid.

Third Division Award **16492**, TCEU v. CMStP&P, Referee Daniel House, which the majority cites, has no significant value as a precedent in this case. If the majority had studied that award more carefully than it apparently did, it would have noted the Board was concerned there with applying Rule 9(d) to a factual situation substantially different from that involved in the instant case. The factual situation involved in **Award 16492** was one in which the Carrier assigned the claimant, an agent at one of Carrier's stations, to perform, for a two week period, the work of another agent at a neighboring station who was on vacation. There was no dispute in that case about whether the work performed by claimant at the neighboring station was part of his regular assignment; it clearly was not, since it admittedly was work which the vacationing agent would have performed had he not been on vacation. In the instant case the work at Winfred, a non-agency station, was performed by the one and only employe to whom it was assigned — Claimant Simpson — and nothing prevented the Carrier from so assigning it or making it a part of his assignment. It was not work which was normally assigned to, or considered part of, someone else's assignment.

The majority should also have noted in its consideration of **Award 16492** that the Board's Opinion there does not even pretend to decide what application Rule 9(d) might have had if the claimant in that case had been assigned to perform work at a non-agency station or some other duties which were not normally considered part of his neighbor-agent's regular assignment. Moreover, although the majority in **Award 16492** distorted and expanded the meaning of Rule 9(d) when it stated "the suspension of work referred to is on the regular assignment of the involved employe," it clearly did not find that the work which may be included in an employe's regular assignment is determined by, or limited to, the geographical location at which he normally spends the bulk of his working hours, or the location listed on whatever bulletin or other notice may have been used to award him his job. It would take such a finding to make **Award 16492** a significant precedent in the instant case.

The awards which should have been followed in this case are those which the majority acknowledges were cited by the Carrier but which are summarily rejected even though they admittedly deny claims essentially identical or similar to that presented on behalf of Claimant Simpson. Among the awards summarily rejected by the majority are Third Division **Awards 6945**, ORT v. NYNH&H, Referee Fred W. Messmore; **8428**, CL v. SP, Referee Carroll R. Daugherty; **10950**, ORT v. GR, Referee Roy R. Ray; **11294**, ORT v. GC&SF, Referee Preston J. Moore; **11660**, ORT v. NYC&SL, Referee David Dolnick; **12377**, ORT v. NS, Referee Kiernan P. O'Gallagher; **12486**, ORT v. SR, Referee George S. Ives; **13201**, ORT v. C&IM, Referee Arnold Zack; **13525**, ORT v. NS, Referee Don Hamilton; **14126**, TCEU v. PE, Referee Harold M. Weston; **14437**, TCEU v. CGW, Referee David Dolnick; **14670**, TCEU v. M&P, Referee Arthur W.

Devine; 14742, TCEU v. WM, Referee George S. Ives; 14871, TCEU v. NYC, Referee Gene T. Ritter; 15601, TCEU v. MP, Referee John H. Dorsey; 15850, TCEU v. NP, Referee Wesley Miller; 15974, TCEU v. CRNJ, Referee Nathan Engelstein, 16055, TCEU v. ACL, Referee Thomas J. Kenan; 16288, TCEU v. TC, Referee Jerry L. Goodman, 12332, CL v. GC&SF, Referee David Dolnick.

The reasoning supporting these denial awards is sound, and the majority has commited serious error in refusing to apply such reasoning here.

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H. S. Tansley

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