Award No. 2268
Docket No. CL-2272

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

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 during on or about the month of May, 1942, it required the clerical force of the centralized Timekeeping Bureau consisting of Chief Timekeeper, Time Checkers, Report and Statistical Clerks to work on Saturday afternoons in violation of the Saturday Afternoon Agreement dated February 3, 1922.

2. That the Chief Timekeeper, Time Checkers and Report and Statistical Clerks employed in the centralized Timekeeping Bureau be compensated for additional time worked on Saturday afternoons for each Saturday afternoon subsequent to November 5th, 1942, on which date this complaint was formally presented to the Carrier, at the rate of time and one-half for four (4) hours or for actual time worked should such time worked be less or in excess of four (4) hours.

3. That the claims here filed shall continue to accrue until the Agreement is complied with and/or the claims satisfied.

EMPLOYES' STATEMENT OF FACTS: Prior to on or about March 1st, 1939, the clerical work of keeping time of road and yard train and enginemen on the Missouri Pacific Railroad (except on the Omaha Division) was handled in the district offices of the company at Kansas City, Mo. and Little Rock, Ark.

On or about March 1st, 1939, the clerical work of keeping the time herein referred to was by mutual agreement of the parties moved from the district offices located at Kansas City, Mo. and Little Rock, Ark. to St. Louis, Mo. and established upon clerical positions classified as Chief Timekeeper, Time Checkers and Report and Statistical Clerks in a bureau known as the centralized Timekeeping Bureau, which was set up pursuant to the provisions of a Memorandum of Agreement dated February 11th, 1939, copy for the information of the Board and designated at Exhibit "A."

Day's Work:	Rule 45
Overtime:	Rule 54
Basis of Pay:	Rule 61

of the 1926 agreement to support their claim.

Rule 45 defines the number of hours that constitute a day's work—eight hours. These employes are paid on a daily basis so much per day. The hours that they are required to work for a day's pay are eight hours. They receive a day's pay for Saturdays just the same as they receive a day's pay for Monday, Tuesday or any other day of the week, except Sunday, and then if they work on a Sunday they are paid at a bonus rate of pay. There certainly can be no application of this rule to the instant case, as what the employes are contending for is eight hours pay for four hours work, and then four hours pay at overtime rate or six hours pay for another four hours work, or a total payment of 14 hours pay for eight hours work. The rule says eight hours is a day's work, and Rule 61 provides that they will be paid on a daily basis, that is, they are paid so much per day for an eight hour day. This is what they were paid.

Rule 54—This is the Overtime Rule. It provides that employes will be compensated on the basis of time and one-half for the actual time worked on a minute basis for TIME IN EXCESS OF EIGHT HOURS (Emphasis supplied). These employes did not work in excess of eight hours—they worked but eight hours and were paid for eight hours.

Rule 61—Basis of Pay: This is a rule that provides for these classes of employes to be paid on a daily basis. It further provides that the employes' assignments shall not be reduced below six days per week. These employes are six day week workers—see Carrier's Exhibits Nos. "H" and "I."

The Carrier respectfully submits that having shown

(a) The Saturday Afternoon Agreement of February 3, 1922 has not been violated in any manner whatsoever

(b) That there is no rule contained in the agreement between the Clerks' Organization and the Railroad dated August 1, 1926 to support the Employes' claims

that the claims of the employes should be denied.

OPINION OF BOARD: The principal question presented by this docket involves the interpretation and application of the Saturday Afternoon Agreement executed by the parties February 3, 1922, which agreement provided:

> "The following Agreement will govern the working hours of our clerical forces on Saturday afternoons:
>
> "It is understood that **where** it has been the practice to allow clerks to be off on Saturday afternoons, this practice will not be rescinded or departed from, **except in cases of emergency:** * * *" (Our emphasis)

It is admitted by both parties that this agreement is still in effect and must be interpreted and applied with the current agreement of the parties which was dated August 1, 1926.

First, as to the interpretation of the Saturday Afternoon Agreement. It provides that **where** it has been the practice to give the clerical employes Saturday afternoons off the practice will be retained.

The Employes contend that the word "where" must be interpreted as referring to a location or station where the practice prevailed. To support this contention they cite Award No. 1591 in which Referee Garrison interpreted

this word as used in a rule on starting time of assignments as referring to geographical points or stations. In his letter of January 1, 1943, H. E. Roll, Chief Personnel Officer said that the Saturday Afternoon Agreement "plainly applies to employes in offices where the practice existed," but says that since the Time Keeping Bureau was not then in existence the agreement does not apply. The Employes say, and it is not seriously controverted by the Carrier, that when the Saturday Afternoon Agreement was executed it was the general practice to let the employes in the general offices off on Saturday afternoons; that when the centralized Timekeeping Bureau was established in the general offices in 1939 the employes of that Bureau became a part of the clerical forces of the general offices and under the Saturday Afternoon Agreement were entitled to Saturday afternoons off.

The Carrier contends that prior to the establishment of the Time Keeping Bureau in the general office it was always the practice to work clerks doing this type of work on Saturday afternoons falling within the payroll periods and that this was still necessary after the Time Keeping Bureau was established in the general offices. We are not required to decide whether if it were necessary for these clerks to work on pay rolls on Saturday afternoons within the pay roll periods that fact would take them out of the operation of the Saturday Afternoon Agreement as to those particular Saturday afternoons or as to all Saturday afternoons. Even though such clerks may have been required to work certain Saturday afternoons on pay roll work while they were working out in the District Accounting Offices, we do not believe that was necessary after the centralized Time Keeping Bureau was established in the general offices in St. Louis. The Employes insist that now the time slips are turned in at the end of each run; that they are checked, marked, etc., and turned over to the Machine Bureau where the pay roll is made up; that any time slip getting into their hands too late to be checked, marked, etc., and turned over to the Machine Bureau for one pay roll is simply included in the next pay roll; and that the daily work done by the clerks in the Time Keeping Bureau, both as to kind and quantity is not affected by the pay roll period.

These contentions of the Employes seem to be borne out by the record. Carrier's Exhibit E, showing Saturday afternoons worked by the employes of the centralized Time Keeping Bureau for the period from July, 1939, to February, 1943, does not show that more of these employes were required to work on Saturday afternoons in the payroll periods than on other Saturday afternoons. Rather the Exhibit seems to show a more or less regular increase in the work of the Bureau throughout the period. We therefore do not believe that it can be successfully contended by the Carrier that the Saturday Afternoon Agreement does not apply to these employes because of the type of work they were doing.

Nor do we believe there is support for the contention of the Carrier that the particular positions held by these employes are not covered by the Saturday Afternoon Agreement because such positions formerly covered work on pay rolls which required work on Saturday afternoons during the pay roll periods. By the terms of the Memorandum Agreement, dated February 11, 1939, these positions in the Time Keeping Bureau were established as **new** positions. Certainly new positions, established in an office where the Saturday Afternoon Agreement applied, and which did not involve work which it had been the practice to do on Saturday afternoons, must be held to come under the Saturday Afternoon Agreement.

The Carrier also contends that the work here in question came under the exception to the Saturday Afternoon Agreement in that it was a case of emergency. This contention, we think, was correctly answered in Award No. 2040, where we said in defining "emergency," "It implies the unusual rather than the usual; the extraordinary rather than the ordinary. Regular work regularly required every Saturday afternoon or three-fourths of all Saturday

afternoons cannot be considered emergency work in any ordinary or proper sense of the word." As we said above, the Carrier's Exhibit E shows a steadily increasing volume of work without a proportionate increase in the number of employes. This is also shown by the Carrier's Submission, pages 55 and 56 of the Record. This does not constitute an emergency within the meaning of the Saturday Afternoon Agreement.

It would seem that we have an implied admission by the Carrier in the letter written by H. E. Roll, January 1, 1943, that the Carrier was violating the Saturday Afternoon Agreement as to these employes. In that letter he said: "We will, starting immediately, attempt to apply the provisions of the 'Saturday afternoon off' agreement and give this a trial until February 15, 1943 to determine its workability, and will be governed by our experience under this plan during that time." This would indicate that up until that time the Carrier had not been attempting to apply this agreement to the employes here in question. The Carrier's Exhibit E indicates the same thing.

The Carrier insists that there is nothing in any of the agreements in question to justify extra compensation to the employes even if they were worked in violation of the Saturday Afternoon Agreement. The Carrier cites the bulletins on these positions and also certain general rules of the 1926 Agreement. Rule 45 provided for 8 consecutive hours as constituting a day's work. Rule 54 provided for overtime for work in excess of eight hours. Rule 61 provided that the days should not be reduced below six per week. All of these rules are general and must be considered as modified or controlled by the Saturday Afternoon Agreement, which provides a specific rule for Saturday afternoon work. In Award No. 2040 we held that work required on Saturday afternoon in violation of the Agreement should be paid for as overtime because it was work, continuous with but in excess of the day's work required for Saturday. We affirm that decision.

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 Carrier violated the agreement as claimed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.

DISSENT TO AWARD NO. 2268, DOCKET CL-2272

This Award constitutes a glaring exhibit of misinterpretation of an agreement mutually entered into by two parties with apparent mutually understood benefits to each.

By the reasoning of the Opinion, culminating in the 5th and 6th paragraphs thereof, it was held that the admitted mutually understood necessity for performance of work, and its actual performance, by a portion of the forces at least upon the Saturdays "on which payrolls and accounts fell" had been nullified by the two elements of (1) the change in character of the work and (2) the change in the location of its performance when the work and forces were transferred to the general offices in St. Louis. (Comment upon the virtue or error in the reasoning leading to such decision is not needed in the light of the subsequent maltreatment of the agreement,—the **Saturday Afternoon Agreement,**—which the Opinion thereupon declared applied to these employes in the general offices.)

The Opinion continuing beyond its conclusions of the 6th paragraph then sets up its analysis contrary to and prejudicial of the intent of the Carrier's wording of a letter of January 1, 1943, and follows in the 10th paragraph by reliance upon an Award (No. 2040) issued by this Division, 20 years after the execution of the Saturday Afternoon Agreement, upon a dispute between other employes and another Carrier, distinguished from the instant case as to claim, circumstance and rule, to justify its holding that the instant Carrier when entering into its Saturday Afternoon Agreement thereby committed itself to payment at the rate of time and one-half for the 4 hours of Saturday afternoon when such hours were worked.

It is but necessary to here repeat for immediate reference the precise and complete terms of that agreement, as it appears in the submission of the Petitioner in this case, in order to disclose the absolute fallaciousness of such decision.

"SATURDAY AFTERNOON AGREEMENT

SPECIAL AGREEMENT BETWEEN THE MISSOURI PACIFIC RAILROAD COMPANY AND THE CLERKS IN ITS EMPLOY WITH RESPECT TO THE PRACTICE OF ALLOWING CLERICAL FORCES TO BE ABSENT FROM DUTY ON SATURDAY AFTERNOONS

The following Agreement will govern the working hours of our clerical forces on Saturday Afternoons:

It is understood that where it has been the practice to allow clerks to be off on Saturday afternoons, this practice will not be rescinded or departed from, except in cases of emergency: In consideration of time allowed off on Saturday afternoon, which will be paid for, the Railroad Company will be entitled to an equivalent in hours of overtime, computed under the rules of the Agreement, before compensating the employe—provided, that when it is not necessary to work an equivalent number of hours, no deduction will be made account of time off.

It is further understood that the adjustment of overtime account of Saturday afternoons off will be made monthly.

This Agreement is subject to cancellation upon thirty (30) days notice from either party to the other, of their desire to do so.

This Agreement to be effective February 3rd, 1922.

(Signed)
GEO. M. HARRISON
General Chairman—Clerks

(Signed)
J. F. MURPHY
General Manager, Mo.Pac.R.R.Co.

HUGH M. MC TIGUE

St. Louis, Mo.
February 3rd, 1922."

This is a mutually negotiated and executed agreement. The duty of this Division was to determine the intent of the parties in order to give expression of its meaning by any Award we might issue.

This Award expresses it to be the intent of the parties (and "parties" necessarily includes the Carrier) that when the latter signed this agreement with the stipulated terms particularly of the second paragraph thereof providing that "In consideration of time allowed off on Saturday afternoon, which will be paid for, * * *" and of additional compensatory performances of work by the employes for such consideration of time off on Saturday afternoon, this Carrier thereby agreed it was stipulating it would pay for Saturday afternoons that were worked at the rate of time and one-half. And that conclusion is reached in the face of the protective stipulation of the terminating clause of that agreement which evidently was included to assure that no meaning other than the mutual intendment of both parties should continue to prevail.

This Award is self-condemning.

(s) C. C. Cook
(s) C. P. Dugan
(s) R. F. Ray
(s) A. H. Jones
(s) R. H. Allison