

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, on January 3, 1949, it removed Relief Clerk Bob Bratton from his regular "Relief Clerk" assignment of Reconsigning Clerk, scheduled to go to work at 10:30 P.M. at Paragould, Arkansas; and

2. Required Relief Clerk Bratton to go to work at Wynne, Arkansas at 3:00 P.M. to fill a vacancy there on position of Yard Clerk, which arrangement required Clerk Bratton to travel, leaving Paragould, Arkansas by bus, 7:00 A.M. until arrival at Wynne at 9:40 A.M., consuming 2 hours and 40 minutes traveling and wait after his arrival at Wynne, 9:40 A.M. until 3:00 P.M. to start work, or 5 hours and 20 minutes waiting, 9:40 A.M. to 3:00 P.M., and failed and refused and continued to refuse to compensate him in accordance with Agreement provisions.

3. Clerk Bratton shall be compensated

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|---|---------|
| (a) Traveling time, 7:00 A.M. to 9:40 A.M. 2 hours and 40 minutes at pro rata hourly rate of \$1.19125, amount | \$3.18 |
| (b) Waiting time at Wynne, 9:40 A.M. until 3:00 P.M. 5 hours and 20 minutes at pro rata hourly rate of \$1.19125, amount | 6.34 |
| (c) For time worked at Wynne, 3:00 P.M. to 10:30 P.M. in advance of his starting time on his regularly assigned position at Paragould, 7 hours and 30 minutes at punitive hourly rate of \$1.786875, amount | 13.40 |
| (d) For the thirty minutes worked at Wynne, Arkansas, 10:30 P.M. to 11:00 P.M., which was within his regularly assigned hours to work at Paragould, 30 minutes at pro rata hourly rate of \$1.1925, amount | .60 |
| Total | \$23.52 |

Less amounts paid, i.e.,
 3 hours, 45 minutes pro rata hourly rate of
 \$1,1925, amount \$4.40

Traveling time
 2 hours, 40 minutes @ \$1.786875 4.80 9.20

\$14.32

that is justly due Clerk Bratton account Carrier's violation of Agreement.

EMPLOYEES' STATEMENT OF FACTS: Paragould, Arkansas is a division point on the Carrier's Memphis Division. Wynne, Arkansas is an intermediate point on the same Division. On January 3, 1949, the Carrier maintained the following clerical force at Paragould, subject to the scope and operation of the Clerks' Agreement:

Position	Occupant	Rate	Seniority Date	Hours of Assignment	Rest Day
Cashier	R. E. Martin	\$10.03	6/28/19	8AM-12N; 1PM-5PM	Six days wk. Wednesday
Waybill Clerk	E. M. Thompson	9.53	10/19/36	9AM-1PM; 1:45PM-5:45PM	Six days wk. Tuesday
Warehouse Clk.	T. J. Crowley	9.88	7/18/18	8AM-12N; 1PM-5PM	
Crew Caller	W. C. Baldwin	7.88	5/3/48-Gr. 2 10/18/48-Gr. 1	2:45AM-7AM; 7:30AM-11:15AM	

also a pool of six jobs, two (2) of which are located at Paragould and the remaining four positions constituting the pool were located at Wynne, for which pool a regularly assigned Relief Clerk, Mr. Bob Bratton was also maintained as follows:

Position	Occupant	Rate	Group 1 Seniority Date	Hours of Assignment	Rest Day
General Clerk*	H. T. Cole	\$9.03	9/3/42	5:45PM-10:45PM; 11:45PM-2:45AM	Sunday
Reconsign. Clk.*	F. M. Stage	9.53	10/8/19	10:30PM-6:30AM	Monday
Yard Clerk#	E. Faulkner	9.28	10/25/39	7AM-3PM	Wednesday
Ticket Clerk#	J. C. Stutts	9.43	7/1/17	7:30AM-12N; 1PM-4:30PM	Thursday
Yard Clerk#	H. Wood	9.28	3/15/48	3PM-11PM.	Friday
Yard Clerk#	S. G. Hannah	9.53	7/1/18	11PM-7AM	Saturday
Relief Clerk	Bob Bratton		2/19/47		Tuesday

* Denotes position located at Paragould

Denotes position located at Wynne

Note: Rates of pay shown are those as of September 1, 1947. The 7c per hour increase as of October 1, 1948 is not included here.

while at Paragould, but not while at Wynne. The fact that Bratton claimed and accepted payment of expenses while at Paragould and did not claim expenses while at Wynne is evidenced that he understood his headquarters to be at Wynne. It should be understood that the Carrier did not pay expenses on this Rest Day Relief position on account of the provisions of Rule 28 or any other rule in the agreement, but because of a more or less general custom to pay expenses in connection with work performed away from home.

Carrier calls attention to the fact that the position to which Bratton was transferred was one of the positions in his Rest Day Relief pool—a position on which he performed rest day relief work regularly one day each week. It is our opinion that the provisions of Rule 28 would not be applicable to the transfer of Bratton from and to any positions within his Rest Day Relief pool, but they would be applicable to him, only if transferred to a position outside the pool and away from Wynne. In other words, his job is work within a designated pool of positions. To the extent necessary to protect the positions in that pool, he is assigned to road service. Rule 28 specifies that its provisions apply to "employees not regularly assigned to road service." If Bratton had not gone from Paragould to Wynne on January 3, this trip would have been necessary later on in order for him to protect his next rest day relief tour of duty on position of Yard Clerk at Wynne 7:00 A.M. to 3:00 P.M. on Wednesday, January 5.

There is another Memorandum of Agreement between the parties to this dispute known as "Method of Filling of Temporary Vacancies as Referred to Herein". This Memorandum of Agreement was effective December 1, 1948 and a copy is attached as Carrier's Exhibit "N". It outlines the agreed manner of filling vacancies due to illness. There was no employee available to fill Faulkner's position January 3 under any of the four items listed in this Memorandum of Agreement but Items 1 and 4 do recognize the right to transfer an employee from one position to another. We hold the opinion that an employee can be required to protect any work he is granted authority to claim under agreement provisions at the pro rata rate he would receive if he voluntarily requested and was awarded the service, or the pro rata rate of his regular assignment, whichever is the greater.

The Carrier has offered to pay Mr. Bratton for his day's work at Wynne on January 3, the rate of his Rest Day Relief assignment for that day, which is 25 cents greater than the rate of the Yard Clerk position on which he worked, and time and one-half for 2'45" worked on a shift in addition to his own in a twenty-four hour period less pro rata payment already made for that 2'45" period. Such settlement would make him whole for the day plus \$1.59. He was not inconvenienced by the action of the Carrier, but in fact was back home sooner than he would have been if he had not been transferred. He worked at Wynne a position he was accustomed to working one day each week.

We do not believe the Employees have proven a violation of any provision of the agreement in this case nor that the rules they rely upon as basis for the claim require payment thereof. We do believe we have shown the action of the Carrier was permissible under the agreement and correct and proper payment has been offered for the service rendered.

(Exhibits not reproduced).

OPINION OF BOARD: On January 3, 1949, Yard Clerk Faulkner at Wynne, Arkansas, assigned 7:00 A.M. to 3:00 P.M., was absent from his work on account of illness. The Agent at Wynne excused the Yard Clerk completing his tour of duty at 7:00 A.M., from his obligation to double on Faulkner's position. The Yard Clerk working the shift following Faulkner's assignment for that day was notified to work the shift in advance of his own. He worked this shift in advance of his own and was paid the overtime rate therefore. After working Faulkner's shift, this Yard Clerk (Wood) asked to be excused from working his own shift and the Agent granted his request. There were six positions in what is termed a "pool" on the Memphis Division, four at Wynne

and two at Paragould. The relief position for these six assignments was occupied by Clerk Bratton. On the day in question, Clerk Bratton's assignment required him to work at Paragould, 10:30 P.M. to 6:30 A.M. He was directed, however, to report at Wynne and work Wood's position, 3:00 P.M. to 11:00 P.M., which assignment commenced 7.5 hours in advance of his regular relief assignment. Clerk Bratton departed from Paragould at 7:00 A.M. by bus and arrived at Wynne at 9:40 A.M., there waited 5'20" until 3:00 P.M. to commence work. The day following (Tuesday) was Clerk Bratton's rest day and on Wednesday his regular relief assignment required him to work at Wynne, 7:00 A.M. to 3:00 P.M., which he worked. It is the contention of the Organization that Bratton should be paid for 7'30" at punitive rate of work performed in advance of his regular assignment; for 30" at pro rata for work within his regular assignment; for 2'40" traveling time at pro rata rate; and 5'20" waiting time at the pro rata rate. The Carrier paid claim for 8 hours at pro rata rate amounting to \$9.28. The claim is for the difference.

The controlling agreement requires the use of incumbents of positions in a wheel before using regularly assigned employees of other positions when extra or furloughed men are not available. In any event, the Carrier subjected itself to penalty in suspending claimant from his assignment for the purpose of absorbing overtime on another position and directing him to work Wood's assignment at Wynne. Rule 25 (e), current Agreement. He is clearly entitled to time and one half for time worked outside the hours of his regular assignment. Rule 25 (d), current Agreement. Claimant is also entitled to the pro rata rate for time worked within his assignment, it being the extent of the claim made by him on this phase of the case.

We agree with the Organization the claimant is entitled to 2'40" travel time at the pro rata rate made necessary by Carrier's suspension of his regular assignment. See Rule 23, current Agreement. The claim for waiting time is not valid for the reason that Wynne was claimant's headquarters and the rule does not contemplate paying waiting time when one is at his home station. Claimant should have been paid \$17.18, less any amounts paid on this claim.

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 Employees involved in this dispute are respectively carrier and employees 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 herein; and

That the Agreement was violated.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.