Award No. 5504
Docket No. CL-5467

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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 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, on April 1, 1950, it failed to utilize the senior available qualified Clerk to perform work required by the Carrier to be performed on a day which is not a part of any assignment, on which day there was neither an extra or unassigned employe nor the regular employe available;

2. Clerk Earl D. LaOrange shall be compensated for three hours at the punitive rate of $2.137 per hour, or $6.41, account Carrier's action in violation of the Agreement on the date shown as per Claim No. 1.

EMPLOYES' STATEMENT OF FACTS: Hoisington, Kansas is a Division point on the Central Kansas-Colorado Division of the Missouri Pacific Railroad, located approximately 275 miles west of Kansas City.

In addition to a certain clerical force employed in the Mechanical Department and Supply Department at Hoisington and in the Trainmaster's Office, none of which force constitutes a part of the Station and Yards clerical force but which is a part of a separate and distinct seniority district and roster entirely, that of the General Superintendent's Western District Clerks' seniority roster and the System Supply Department seniority roster, and are not involved in this dispute, however, the Carrier also employs and maintains a Station and Yards clerical force which includes Clerks employed at the Yard Office, in the passenger station, in the Local Agent's office and on the Warehouse platform, which Station and Yards clerical force is involved in this dispute. That force at the time this instant dispute and claim arose according to the record available to the Employes was as follows:

If they did not, there would be no purpose or logic in having two different rules. The service must come under one or the other of the rules; it cannot at one and the same time come under two rules that cover two different situations.

In order to bring what we consider the fallacy of the Employes' position in this dispute into focus we ask you to consider what the application would be in connection with an acute situation of the same conditions. Suppose the need for a yard clerk became urgent as of 1:50 A. M., Sunday. This would be just ten minutes before the 2:00 A. M. yard clerk position is scheduled to start work. Could we be expected to agree that we are obliged to call the 9:00 P. M. yard clerk and pay him three hours' pay for this ten minutes work? We do not think so and do not so agree. The work involved is yard clerk work, exactly the same kind of work done by the 2:00 A. M. yard clerk. It is overtime before the assigned hours of that position.

We believe we have shown in this submission

(a) that the work involved was overtime on the 2:00 A. M. yard clerk position and the incumbent thereof was properly and correctly used in accordance with Sections (a) and (b) of Rule 25, and

(b) that Rule 25½ was not applicable to the work and even if it had been it would not support this claim as its provisions do not extend beyond "an unassigned employe" and the "regular employe" of an involved position.

(Exhibits not reproduced.)

OPINION OF BOARD: The work which forms the basis for this claim was clearly part of the regular duties of the 9:00 P. M. Yard Clerk Position on the assigned days of work of that position, particularly the calling of train crews for trains departing prior to 2:00 A. M.

Under the provisions of Rule 25 (b) and 25½, and the Agreement of January 20, 1950, amending the Agreement dealing with the application of Rule 25 (b), and under the facts here presented it appears that Claimant was the senior qualified and available employe so he should have been called to perform the service.

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 Adustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.