

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. Saturday, December 24; Sunday, December 25; Monday (holiday) December 26, 1949; Saturday, May 27; Sunday, June 4, Saturday, June 10; Sunday, June 18; Saturday, July 1; Saturday, July 8; Sunday, July 9; Sunday, August 13; Saturday, August 19; Sunday, August 20; Sunday, August 27, 1950, on the Commissary Storekeeper's assigns rest day and on a holiday, when his work week was reduced by the number of such holidays (see Rule 27(b)), as shown in Employees' Claim Statement attached hereto and made a part hereof, it removed the work constituting an integral part of the duties regularly assigned to and performed by the Commissary Storekeeper at Little Rock, Arkansas, seven days per week prior to September 1, 1949 and on week days, Monday through Friday, effective September 1, 1949 and subsequent thereto on claim dates shown, out from under the scope and operation of the Clerks' Agreement, and utilized a Dining Car Inspector, an officer of the Traffic Department, Mr. J. L. Glass, to perform same;

2. Commissary Storekeeper Mr. Joseph P. Nahlen be paid for a "call" as stipulated in attached "Claim Statement" for each instance shown in the Claim Statement, account Carrier's action in violation of the Agreement, Scope Rule 1, Rule 3(e) and Interpretation thereto dated November 18, 1948, Rule 6(a), Rule 25 and Interpretation thereto dated November 20, 1948, and Rule 25½ and other related or pertinent rules of the Clerks' Agreement.

CLAIM STATEMENT

J. P. NAHLEN, COMMISSARY STOREKEEPER
MISSOURI PACIFIC RAILROAD COMPANY
LITTLE ROCK, ARKANSAS

Assigned Hours—8 A.M. - 12 Noon; 1 P.M. - 5 P.M.

Monday through Friday

Rest Days—Saturday and Sunday

Claim Date	Hours Claimed	Hourly Rate	Amount of Claim	Basis of Claim
Saturday 12/24/49	2 hour call	\$2.50	\$5.00	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10233 on Train 8 scheduled to depart at 3:30 P.M. with 48 half pts. milk that Mr. Glass ordered from Terry Dairy Company, 24 loaves of toast bread Mr. Glass ordered from Colonial Bakery Company all of which was work attaching to position of Commissary Storekeeper and per- formed by him Monday through Friday.
Sunday 12/25/49	2 hour call	\$2.50	\$5.00	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10235 on Train 7, scheduled to depart at 11:25 A.M. with 50 lbs. Irish potatoes and 10 doz. eggs which was borrowed from the Missouri Pacific Restau- rant located in the Union Station Bldg. at Little Rock, which sup- plied it was necessary for Claim- ant Commissary Storekeeper to replace on Monday, December 26, 1949.
Monday 12/26/49 (Holiday)	8 hours	\$2.50	\$20.00	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department 1. Supplied Car #873 departing on Train #220 at 3:30 P.M. with 12 loaves of toast bread from Colonial Baking Com- pany, 2 qts. cream and 24 half pts. of milk from Sunnymede Dairy Company;

Claim Date	Hours Claimed	Hourly Rate	Amount of Claim	Basis of Claim
				<p>2. Supplied Car #10906 departing on Train #124 at 4 P.M. with 12 half pts. milk and 4 qts. cream taken from Commissary stock that was ordered from the Sunnymede Dairy Company;</p> <p>3. Supplied Car #6409 departing on Train #131-132 due to depart at 1:30 A.M. with 12 loaves of toast bread from Colonial Baking Company;</p> <p>4. Supplied Car #732 departing on Train #334-335 out of Little Rock on Train #103 at 6 P.M., with 18 half pts. milk and 4 qts. cream supplied from Commissary stock which was ordered from Sunnymede Dairy Company.</p> <p>These supplies were shipped to McGehee, Ark. on Car #6411, Train #103 out of Little Rock at 6 P.M.</p>
Saturday 5/27/50	2 hour call	\$2.385	\$4.77	<p>J. L. Glass, Dining Car Inspector and an officer of the Traffic Department</p> <p>Supplied Car #10239 departing on Train #7 at 11:25 A.M. with 12 loaves Pullman bread from Colonial Baking Company.</p>
Sunday 6/4/50	2 hour call	\$2.385	\$4.77	<p>J. L. Glass, Dining Car Inspector and an officer of the Traffic Department</p> <p>Supplied Grill Car #6409 for Train #124 departing from Little Rock at 4 P.M. with 24 half pts. milk from Terry Dairy Company.</p>
Saturday 6/10/50	2 hour call	\$2.385	\$4.77	<p>J. L. Glass, Dining Car Inspector and an officer of the Traffic Department</p> <p>Supplied Car #10238 on Train #7 departing from Little Rock at 11:25 A.M. with 50 loaves of bread from Colonial Baking Company.</p>

Claim Date	Hours Claimed	Hourly Rate	Amount of Claim	Basis of Claim
Sunday 6/18/50	2 hour call	\$2.385	\$4.77	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Grill Car #273 on Train #219, departing from Little Rock at 11:25 A.M. with 48 half pts. milk from Terry Dairy Company.
Saturday 7/1/50	2 hour call	\$2.62	\$5.24	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department 1. Supplied Car #6413 for Train #131, departing at 1:30 A.M. with 16 loaves of bread from Colonial Baking Co., 24 half pts. milk from Terry Dairy Company;
	2 hour call	\$2.62	\$5.24	2. Supplied Car #10907 on Train #4, departing 7:55 A.M. with 12 loaves Pullman bread;
	2 hour call	\$2.62	\$5.24	3. Supplied Car #10238 for Train #7, departing 11:25 A.M. with 6 qts. milk and 70 half pts. milk from Terry Dairy Company;
	2 hour call	\$2.62	\$5.24	4. Supplied Car #10237 for Train #8, departing 3:20 P.M. with 12 loaves Pullman bread from Colonial Baking Company.
Saturday 7/8/50	2 hour call	\$2.62	\$5.24	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10239 for Train #7 departing at 11:25 A.M. with 25 loaves Pullman bread from Colonial Baking Co. and 30 half pts. milk and 6 qts. X-cream from Terry Dairy Company.
Sunday 7/9/50	2 hour call	\$2.62	\$5.24	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #6412 and Car #10239 on Train #8 departing at 3:20 P.M. with 12 loaves Pullman bread from Colonial Baking Co., 12 half pts. milk from Terry Dairy Co., supplied Car #6415 for Train #124 at 4 P.M. with 12 half pts. milk from Terry Dairy Company.

Claim Date	Hours Claimed	Hourly Rate	Amount of Claim	Basis of Claim
Sunday 8/13/50	2 hour call	\$2.48	\$4.96	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10239 for Train #7, departing at 11:25 A.M. with 12 loaves Pullman bread from Colonial Baking Co. and 60 half pts. milk from Terry Dairy Com- pany.
Saturday 8/19/50	2 hour call	\$2.48	\$4.96	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10050 for Train #8, departing 3:20 P.M. with 10¾ lbs. Lake Trout from Little Rock Fish & Oyster Company.
Sunday 8/20/50	2 hour call	\$2.48	\$4.96	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10237 for Train #7, departing 11:25 A.M., bor- rowed 30 lbs. potatoes from Union Station Restaurant which Com- missary Storekeeper Nahlen re- placed on Monday, August 21, 1950.
Sunday 8/27/50	2 hour call	\$2.48	\$4.96	J. L. Glass, Dining Car Inspector and an officer of the Traffic Department Supplied Car #10237 for Train #8, departing at 3:20 P.M., with 6 loaves Pullman bread from Colonial Baking Company.

Total Number of Calls:

2	2-hour calls @ \$2.50	per hour—\$ 5.00.....	\$10.00
1	8-hour call @ \$2.50	per hour—\$20.00.....	20.00
4	2-hour calls @ \$2.385	per hour—\$ 4.77.....	19.08
6	2-hour calls @ \$2.62	per hour—\$ 5.24.....	31.44
4	2-hour calls @ \$2.48	per hour—\$ 4.96.....	19.84

Total amount of calls.....\$100.36

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad maintains a Commissary Store at Little Rock, Arkansas, which is a part of the Supply Department over which a General Storekeeper whose office is located at St. Louis, Missouri, has jurisdiction.

words, hang up and go home—and get \$5.00 for it. We do not believe for a moment that such is the intent or spirit of the 40-hour week agreement. We believe the intent and spirit of the agreement is to release employes for two days each week, not to disrupt rest days with calls to perform five to ten minutes work when the Carrier has an employe on duty who can perform such work incident to his own duties.

It is obvious that the small amount of work here under consideration—too insignificant, in our opinion, to be worthy of involvement in a dispute of this kind—could have no effect upon this claimant's regular work week. It could not be held over and included in the five day assignment and even if it could there would be no necessity thereby created for the working of overtime on any of the assigned days. Yet for this insignificant amount of work, the Employes would disrupt the five day week program and demand work on rest days because the Carrier would be required to pay extra if it so used them.

In some recent submissions in other dockets this organization has taken this Carrier to task as to what the Employes choose to call the "horrible example". In Docket CL-5467 their claim was for a call payment of three hours at punitive rate for three hours work. When we pointed out that by their interpretation of the rules a minimum two-hour call would be due for even fifteen minutes of the three hour period they called it a "horrible example". They said the Carrier was measuring them by its own yardstick to suggest they would make any "horrible example" claims. Yet here you have claims based on the so-called "horrible example" itself with nothing else involved—a call claim for less than ten minutes work—work that is incident to the duties of a Carrier supervisor.

We have made it clear in this submission that we do not consider the work in dispute is covered by the scope of the Clerks' Agreement; therefore, it is our position that none of the rules cited by the Employes have any application to it. If the work was covered, then the call rule would prescribe the method of paying the employe required by the Carrier to perform it. We do not see how any other rule would be applicable to the work even if it were covered.

It is the position of the Carrier that there has been no violation of the Clerks' Agreement in the action that brought on this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: With the establishment of the 40-hour week, Carrier reduced the work week of its employes at its commissary store at Little Rock, Arkansas, to 5 days. In preparation for the closing of the commissary on Saturdays and Sundays, Carrier made a "Portakold Refrigerator" available to its dining car inspector at Little Rock to draw sufficient food supplies from the commissary store on Fridays for passing cars that might need replenishing on Saturdays and Sundays. On certain holidays and rest days of the Claimant the regularly assigned occupant of the position of Commissary Storekeeper at Little Rock, which days are specifically set forth in a tabulation appended to the Statement of Claim, a dining car inspector made local purchases of food supplies from local dealers by telephone for delivery direct to dining cars and office cars moving through that terminal. It is the ordering of those supplies by the dining car inspector which forms the basis for the employes' claim herein. It is the employes' contention that that work was subject to the scope of the Carrier's agreement with the Brotherhood of Railway Clerks and that it was a violation of that agreement for the dining car inspector or employes not within its scope to perform it. The Carrier contends that when it does not choose to have the supplies pass through the commissary store no employes in the Commissary department has any right to the work of purchasing or handling them.

It would serve no purpose to here set forth the varying contentions of

the parties with respect to the historical practice concerning the performance of this type of work at the Little Rock Station. Suffice it to say that the record supports a finding that the making of local purchases of supplies for the Commissary at Little Rock, which in turn was the source of supply for the dining cars, was handled by the Commissary Storekeeper exclusively prior to the advent of the 40-hour week and also on Monday through Friday thereafter. Under such circumstances the disposition of this claim is governed by the principles established by this Board in those awards of this Board which hold that work performed six days per week by a clerk is within the scope of the Clerks' Agreement on Sunday as well. See Awards 4059, 4477 and Awards therein cited. That principle was not changed or abrogated by the 40-hour Week Agreement. It follows that a sustaining award is in order.

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 involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.