Award No. 5705
Docket No. CL-5729

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, 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 Saturday, September 9, 1950, the Carrier utilized regularly assigned Laborers—

C. P. Ramsey—Seniority	(Group 3—October 25, 1932 (Group 1—June 15, 1943
H. C. Melton—Seniority	(Group 3—July 22, 1939 (Group 1—September 16, 1943
K. A. Yeager—Seniority	(Group 3—November 9, 1942 (Group 1—September 17, 1943

whose regular positions of Laborer were assigned Monday through Friday, with rest days or unassigned days Saturday and Sunday, as Check Clerks in Group 1 (Ramsey and Yeager at Gratiot Street Warehouse Platform, Melton at Seventh Street Warehouse Platform) and did not utilize regularly assigned Check Clerks—

J. L. Boyd, Seventh Street, 8:30 A. M. to 12:30 P. M.; 1:30 P. M. to 5:30 P. M., Monday through Friday, unassigned days Saturday and Sunday, Group 1, seniority, August 29, 1922;

A. J. Graceffa, Seventh Street, 8:30 A. M. to 12:30 P. M.; 1:30 P. M. to 5:30 P. M.; Monday through Friday, unassigned days Saturday and Sunday, Group 1 seniority, June 16, 1941

since obviously to have used Boyd and Graceffa would have incurred payment of punitive rate for work performed on their unassigned days, while it reasoned that the use of Ramsey, Melton and Yeager would incur but pro rata pay, since they were regularly assigned Laborers, Group 3, working from day to day in Group 1 in accordance with their seniority rights in Group 1, contending that Agreement provisions, Rule 27 (b) did not re-

duce their work week to 32 hours due to holiday, Labor Day, falling on Monday, September 4, the same as it would reduce the work week of Boyd and Graceffa to 32 hours that week.

2. C. P. Ramsey, H. C. Melton and K. A. Yeager shall be compensated the amount of difference between pro rata rate of $12.12 per day and punitive rate of $18.80 per day, amount $6.06, for Saturday, September 9, 1950, for work performed on their unassigned day or rest day, growing out of the Carrier's action in violation of the Agreement.

3. J. L. Boyd and A. J. Graceffa shall each be paid for a day of eight hours at the Check Clerk punitive rate of $18.18, account denied the right to work on Saturday, September 9, 1950, in accordance with their incumbency and seniority rights, growing out of the Carrier's action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: On the claim date of September 9, 1950, Clerk J. L. Boyd, with seniority date in Group 1 of August 16, 1922, was a regularly assigned Check Clerk, rate $12.00 per day at Seventh Street Station Warehouse Platform, hours 8:30 A.M. to 12:30 P.M.; 1:30 P.M. to 5:30 P.M., Monday through Friday; his unassigned days to work were Saturday and Sunday.

Clerk A. J. Graceffa with a seniority date in Group 1 of June 16, 1941, was a regularly assigned Check Clerk at the same station, same rate, same assigned hours, same unassigned days—unassigned to work, as in the case of J. L. Boyd, claimant hereof.

Messrs. Ramsey, Melton and Yeager were unable to hold an assignment to a regular clerical position in Group 1, consequently they were furloughed from that group and seniority roster and in accordance with the Reduction in Force Rule 14, had reverted to positions of Laborer on Group 3, Laborers' seniority roster on the warehouse platforms in line with their seniority rights, Ramsey and Melton at Seventh Street, Yeager at Gratiot Street station, and their Laborer positions were assigned Monday through Friday, with unassigned days to work of Saturday and Sunday, which days were their established rest days.

Employes (Laborers) Ramsey, Melton and Yeager, because of their seniority standing upon the Group 1 Clerks' seniority roster from which they were furloughed, were used by the Carrier to perform extra and relief work, filling vacancies in place of some absentee clerk, Tuesday, September 5; Wednesday, September 6; Thursday, September 7; and Friday, September 8, 1950. They did not work on Monday, September 4, 1950, because it was Labor Day—legal holiday—on which day their positions of Laborer did not work since the work week for them was reduced the number of days that holidays occurred in that week, hence their work week was reduced to 32 hours. The Carrier's freight warehouses were closed on Labor Day.

The vacancies these Laborers were filling in accordance with their seniority in Group 1 in the sense of extra and relief were those recurring with regularity each of the four days, Tuesday, September 5 to Friday, September 8, both dates inclusive, but while they were so used, their base or assigned position was that of Laborer and their established unassigned days or designated rest days of Saturday and Sunday were unchanged.

Monday, September 4, 1950 was Labor Day, one of the holidays stipulated in Rule 26 (b)—"Holiday Work" of the current Agreement:

> "Employes required to work on the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day ob-

into account. We do not believe it was the intent of the makers of the Agreement to permit employes with guaranteed assignments to extend such assignments into excess punitive pay days at the expense of extra or unassigned employes who are not even guaranteed one day of work a week and must depend upon some excess service in some weeks to offset other lean weeks in order to approach the amount of work the assigned man is guaranteed. We find nothing in the Clerks' Agreement that gives an employe a preferred status just because he is assigned. The extra and unassigned man has the same potential obligations financially as the assigned man and we find nothing in the agreement that provides or contemplates giving the assigned man excess days at punitive pay when that very action reduces the average earnings of the unassigned man to less than a full five day week—sometimes much less.

That, in our opinion, involves the principle of the thing—the spirit and intent of the agreement, considered in the light of the relative status of employes in a single group. It is true in this particular case the three employes used held regular assignments in a lower group—they could work in Group 3 to fill out the week if there was not sufficient work in Group 1, but even here the principle applies to a considerable extent. The rates of pay in Group 3 are substantially less than in Group 1.

We hold no brief for Ramsey, Melton and Yeager. They also want time and one-half pay when to us it is obvious only pro rata is due. We have been discussing the principle involved in behalf of extra and unassigned employes who expect only what the Agreement provides and it is emphatically the Carrier's position that the Agreement fully supports the principle we have set forth in this statement and does not provide for anything more than has been paid in this case.

Furthermore, the Carrier is entitled to some consideration in these situations. We do not believe it was, or is, the intent of the 40-hour week agreement to pay furloughed employes time and one-half for work performed after 32 hours in any week. Neither do we believe it was intended to compel the use of a regular employe in excess of his established work-week when the Carrier has available to relieve him an employe who has not worked his full work week, which was the situation in this case.

We think it is a strange progression of a claim based on an alleged violation of the Agreement, that fails to designate, at any point in the handling, the provision or provisions violated. The statement of claim in appeal to your Board even fails to do so. The only rule mentioned is 27 (b), a **prohibitory** provision which the Employes indicate placed upon the Carrier an **obligation** to do the thing prohibited. This seems to us to be a rather roundabout way to support a claim, and the Employes did not contend a violation of Rule 27 (b). This rule prohibits reducing the work week below five days except in weeks in which holidays occur while in this instance the Carrier worked employes five days notwithstanding the presence of a holiday therein.

The Carrier has stated in its position that Rule 14 (g) required the use of Ramsey, Melton and Yeager and that Rule 25½ permits their use—thus, we had requirement and permission. In order to meet the indefinite charge of the Employes "that the Carrier violated the Clerks' Agreement," the Carrier further states its position to the effect that it denies violation of any provision of the Clerks' Agreement. We think the issue narrows down to whether these three employes, furloughed from Group 1 were unassigned employes while working in that Group. It is the position of the Carrier that they were clearly in that category and could properly work any five days (other than a holiday) in the Monday through Sunday work week at pro rata rate of pay.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute arises out of the fact that on Saturday, September 9, 1950, Carrier used C. P. Ramsey, H. C. Melton and K. A. Yeager to perform unassigned check clerk duties, Class 1 work, at its Gratiot Street and Seventh Street Warehouse Platforms and paid them at the pro rata

rate of that class of work for performing it. The Brotherhood contends J. L. Boyd and A. J. Graceffa should have been used and therefore makes claim on their behalf for that day at time and one-half. It also claims that the three men used should have been paid at time and one-half instead of pro rata because Saturday was one of their rest days.

Boyd and Graceffa were regularly assigned check clerks at Carrier's Seventh Street Warehouse Platform with Saturday and Sunday as their days of rest. Ramsey and Melton were regularly assigned Class 3 laborers at Carrier's Seventh Street Warehouse Platform with Saturday and Sunday as rest days. Yeager was a regularly assigned Class 3 laborer at Carrier's Gratiot Street Warehouse Platform with Saturday and Sunday as his rest days. However, Ramsey, Melton and Yeager all had Class 1 seniority, having been furloughed from that class of work because their seniority was not sufficient to enable them to hold an assignment thereon. See Rule 14 (c).

Rule 14 (g) of the parties' Agreement provides:

> "Employes holding seniority rights in a higher group who are displaced therefrom and holding a regular assignment in a lower group, may, except to meet emergency situations, waive the requirements of Section (e) of this rule to short vacancies of three days or less duration, including positions bulletined pending assignment under Rule 8 by filing written notice with their employing officer, with copy to the Division or Local Chairman. This notice may be cancelled upon written request of the employe by mutual agreement between the employing officer and the Local or Division Chairman. Employes failing to file notice of waiver will be notified and required to report for such vacancies subject to Rules 4 and 7 in the order of their seniority. Failure to report within seven days after being notified by mail or telegram sent to last address given, or give satisfactory reason for not so doing, they will forfeit their seniority in the higher group."

The factual situation here brings Ramsey, Melton and Yeager squarely within this Rule and Carrier was obligated to use them, since they did not waive Carrier's obligation in this regard. In view thereof Carrier properly called Ramsey, Melton and Yeager and the claim that it should have called Boyd and Graceffa is without merit.

When Ramsey, Melton and Yeager were properly called to do this unassigned work they did so as unassigned employes in Class 1 and subject to the working conditions of that class of employes.

Rule 25½ provides: "Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty hours of work that week; in all other cases by the regular employe."

Rule 21—Section 2 (1) provides in part: "The term 'work week' * * * for unassigned employes shall mean a period of seven consecutive days starting with Monday".

Within these rules Ramsey, Melon and Yeager were unassigned employes who did not otherwise have forty hours of work that week.

In view of the foregoing we find the claims made to be without merit.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 4th day of April, 1952.