

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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. (a) When on Sunday, February 7, 1954, it moved regularly assigned Receiving-Check Clerk J. R. Twente from his assigned position and location on a work day at Seventh Street Station freight warehouse platform and utilized him to work at Gratiot Street Station freight warehouse platform as Receiving-Check Clerk, in lieu of utilizing Receiving-Check Clerk Ben Kelner, "the regular employe", regularly assigned at Gratiot Street Station who was on his rest day but was available, in violation of Rules 8, 24, 25 (f) and related rules of the Clerks' Agreement.

(b) When on Sunday, February 7, 1954, it moved regularly assigned Receiving-Check Clerk C. Roy, from his assigned position and location on a work day at Seventh Street freight warehouse platform and utilized him to work at Gratiot Street Station freight warehouse platform as Receiving-Check Clerk, in lieu of utilizing Receiving-Check Clerk Richard Grass, "the regular employe", regularly assigned at Gratiot Street Station freight warehouse platform as Receiving-Check Clerk and who was on his rest day but was available for service, in violation of Rules 8, 24, 25 (f) and related rules of the Clerks' Agreement.

2. Receiving-Check Clerks Ben Kelner and Richard Grass, "the regular employes" at Gratiot Street Station shall be compensated for eight hours each at the punitive rate of \$2.715 per hour, amount \$21.72, account they being denied work on Sunday, February 7, 1954, which they are the incumbents of and actually perform five days per week, Tuesday through Saturday, and which work they were justly entitled to perform and be paid for, account Carrier's action in violation of Rules 8, 24, 25 (b), 25 (f) and related rules of the Clerks' Agreement.

3. Receiving-Check Clerks J. R. Twente and C. Roy, regularly assigned at Seventh Street Station freight warehouse platform shall be compensated for one day additionally on Sunday, February 7, 1954, at the pro rata rate of \$14.48 per day, account arbitrarily moved by the Carrier from their regularly

assigned position and location on a work day for them and who were sent to another station at a different location, in violation of Rules 8, 24, 25 (f) and related rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad has for many years maintained in the City of St. Louis, Missouri, separate and distinct freight stations and warehouse platform facilities and at each such facility a force of station employes such as General Foreman, Warehouse Foreman, Assistant Warehouse Foreman, Route Clerks, Receiving Clerks, Check Clerks, Delivery Clerks, Sealer and Warehouse platform laboring force, such as Pickers, Stowmen, Callers, Truckers, etc. have been employed and these stations, all of them, have been subject to the jurisdiction and supervision of one Station Agent with Assistant Agents, Chief Clerk, etc. at each station.

Prior to about January 1, 1952 and during the period of Agreements between the Carrier and the Clerks' Organization, going back to the time of the National Agreement effective January 1, 1920, the Carrier maintained **three separate and distinct freight warehouse and platform facilities** and platform clerical and laborer force at each separate station and facility and location, namely:

1. Seventh Street Station—St. Louis, Missouri, at which station the Agent's force and part of the Local Freight Station office clerical force was located;

2. Biddle Street Station—Near Third Street, St. Louis, Missouri, at which station and warehouse platform facility there was employed a Warehouse Platform Foreman, Assistant Foreman, Receiving Clerks, Delivery Clerks, Check Clerks, etc., and a warehouse platform laborer force such as Stowmen, Pickers, Truckers, etc.

3. Gratiot Street Station—At Main and Gratiot Streets, St. Louis, Missouri, where a part of the Agent's office clerical force was located and there was employed also Warehouse Platform Foreman, Assistant Foreman, Receiving Clerks, Delivery Clerks, Check Clerks, etc. and a warehouse platform laborer force such as Stowmen, Pickers, Truckers, etc.

It can be correctly stated that a sizeable force subject to the scope and operation of the Clerks' Agreement was maintained at each of these freight stations and warehouse platform facilities through the years.

On or about July 8, 1938, in accordance with the provisions of a mutual Agreement of the parties, Biddle Street Station freight warehouse facility became known as the "Universal Carloading and Distributing Company" facility and was thereafter used as the carloading and freight forwarding warehouse platform facility of the freight forwarding company who maintained its own office force in the building located near one end of the warehouse platform and the employes of the freight forwarding company on the freight warehouse platform were taken over as provided for in the Agreement of July 8, 1938 and dovetailed as to name and seniority date with the names and seniority dates of Missouri Pacific employes listed upon the St. Louis Terminal (west of the Mississippi River) Station and Yards seniority rosters, Groups 1, 2 and 3. Hence those employes of the freight forwarding company thus taken over by Agreement thereafter became Missouri Pacific Railroad employes with such things as "pass privileges", "hospitalization", "retirement and unemployment insurance benefits" and vacations, etc. extended to them on the same basis according to their service as theretofore were accorded Missouri Pacific Railroad employes and Biddle Street Station remained a separate and distinct station and warehouse platform facility, separate from Seventh Street and Gratiot Street, even though on the same seniority district, and such positions covered by the Clerks' Agreement as were subject to the Bulletin rules of the Agreement were advertised and assigned to employes at Biddle Street designated as a separate and distinct station and location as was also true with

"As result of your letter of February 16, 1946, we discussed in our conference on March 5 the question as to the manner in which bulletins are issued covering various clerical positions at Dupo, Illinois.

Our understanding of the complaint is that it resolves chiefly around the issuing of bulletins to show the location for the particular position, and the heading '. . . and elsewhere as needed.'

Our further understanding is that you do not take the position that employes may not be required to work at locations, within the Dupo Terminal, other than those shown in the bulletin when that is necessary to meet the exigencies of the service.

With that understanding, we told you that we would arrange to have eliminated from future bulletins the addition to the location of the words '. . . and elsewhere as needed'."

The file contains no response to this letter and there is no record of any further handling on the part of the Organization which indicates acceptance of the Carrier's position that transfers within the same seniority district for performance of the same kind of work at the same rate of pay is not a violation of the Agreement.

Of course, the instant case differs from the Dupo case in that it is backed by a well established practice and the claims are based on certain rules and contentions not advanced in the handling of the dispute at Dupo.

It is the position of the Carrier that the Employes have failed to establish any Agreement violation in this case and the rules cited do not support the claims.

(Exhibits not reproduced).

OPINION OF BOARD: The locale of the instant dispute is identical with that with which the Board was concerned in Award 7223; however, here we are concerned with the alleged improper transfer and assignment of Employes Twente and Roy, classified as Receiving-Check Clerk, from the Seventh Street Station to the Gratiot Street Station to perform duties of their classification on Sunday, February 7, 1954.

Claim is made in behalf of the said Twente and Roy for an added day's pay for February 7, 1954, at the pro rata rate, account of being improperly required to work at a location other than their alleged assigned station. Claim is also made for Claimants Kelner and Grass purportedly "regularly assigned Receiving-Check Clerks" at the Gratiot Street Station, at the punitive rate account of not being called to perform the work in question on February 7, 1954, an assigned rest day for both Kelner and Grass.

It is alleged the action of the Respondent in this connection was in contravention of Rules 8, 24 and 25 (f). Rule 8 is the Bulletin Rule. Rule 24 concerns work on unassigned days and Rule 25 (f) concerns the Suspension of Work during regular hours to absorb overtime.

February 7, 1954, was a regularly assigned day of Claimants Twente and Roy while such date was a rest day for Claimants Kelner and Grass, regularly assigned Tuesday through Saturday.

The Board found in Award 7223 that neither Rule 8 (b) of the effective Agreement nor the custom and practice of the parties had the effect of restricting the place of work performance to a specific station or facility and that while the word "location" as used in the Rule indicated the point an employe was required to report to and depart from duty, such word was not necessarily restrictive to the extent that employes could not be used interchangeably

between facilities to meet the exigencies of the service. There is no evidence of record here that will warrant a departure from the principles enunciated therein, that is Award 7223, and find here that Rule 8 (b) was violated.

Sunday being an assigned day for both Twente and Roy and it being permissible within Rule 8 (b) to require work to be performed interchangeably between designated facilities, the work in question was part of their assignment and properly performable by them. Claimants Kelner and Grass who had Sundays as rest days were required to be called only if the amount of work to be performed was in excess of that which could be performed by those regularly assigned on Sunday during the hours of their assignment.

Inasmuch as Claimants Twente and Roy could, on the basis of the record here, be used interchangeably between facilities it cannot be properly said that they were required to suspend work within the meaning of Rule 25 (f). Likewise there is no evidence of record that the work load at the Gratiot facility was in excess of that capable of performance during the assigned hours of those employees having Sunday as a regularly assigned day. The Respondent was not required to call Claimants Kelner and Grass on their rest day when the volume of work was not in excess of that which could be performed by those employees having Sunday as an assigned day, and who could perform all work required during the hours of their assignment.

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 the Agreement was not violated.

AWARD

Claims 1 (a), (b), 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1956.