

Award No. 7294
Docket No. CL-7470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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. On September 6, 1954, the day observed by the nation as a legal holiday (Labor Day) the Carrier reduced the days work of regularly established seven day positions on its Little Rock-Louisiana Division below eight hours, in the manner and to the extent shown in Employees' Claim Statement attached hereto and made a part hereof, contrary to a proper application of Rules 13, 21, 25, 27 and related rules.

2. The Carrier shall be directed to reimburse each claimant for the difference in the amount paid each employe involved for actual time worked and for eight hours at the punitive rate as shown in Claim Statement attached hereto, account Carrier's action in violation of the Agreement.

CLAIM STATEMENT

September 6, 1954—Holiday

William Graff, Bill Clerk, Monroe, La. Daily Rate—\$15.08—3 PM to 8 PM, 9 PM to 12 PM	Days work reduced 8 hrs. to 7 hrs.—paid for 7 hrs. Claim 1 hr. @ \$2.83.....\$2.83
Julius Turner, Station Porter, Monroe, La. Daily Rate \$11.66—4:30 AM to 8:30 AM, 9:30 AM to 1:30 PM	Days work reduced 8 hrs. to 3'30"—paid 3'30" Claim 4'30" @ \$2.19.....\$9.66
A. J. Jones, Yard Clerk, Monroe, La. Daily Rate \$14.06—3:59 PM to 11:59 PM	Days work reduced 8 hrs. to 4 hrs.—paid for 4 hrs. Claim 4 hrs. @ \$2.64.....\$10.56
James M. Guice, Crew Caller, Monroe, La. Daily Rate \$12.38—3:59 PM to 11:59 PM	Days work reduced 8 hrs. to 4 hrs.—paid for 4 hrs. Claim 4 hrs. @ \$2.32.....\$9.68

G. C. Smith, Wheel Clerk, McGehee, Ark. Daily Rate \$14.96—8 AM to 4 PM	Days work reduced 8 hrs. to 2 hrs.—paid for 2 hrs. Claim 6 hrs. @ \$2.80.....\$16.80
Robert E. Vincent, Wheel Clerk, McGehee, Ark. Daily Rate \$14.96—4 PM to 12 PM	Days work reduced 8 hrs. to 4 hrs.—paid for 4 hrs. Claim 4 hrs. @ \$2.80.....\$11.20
James E. Pearson—Yard Clerk, McGehee, Ark. Rate \$14.24—Rest day Relief Clerk various hours—September 6 scheduled and assigned to work 4 PM to 12 PM	Days work reduced 8 hrs. to 5 hrs.—paid for 5 hrs. Claim 3 hrs. @ \$2.67.....\$8.01

TOTAL ALL CLAIMS.....\$68.74

EMPLOYEES' STATEMENT OF FACTS: Monroe, Louisiana is a Division point of the Louisiana Division portion of the Little Rock-Louisiana Division, at which the Carrier maintains a clerical force in its Local Freight station consisting of Chief Clerk; Cashier; Accountant; Revising, Claim, Bill and General Clerks with varying starting times.

The Bill Clerk position, rate \$15.08 per day, assigned hours 3 P. M. to 8 P. M.; 9 P. M. to 12 P. M. (seven day per week position) Sunday through Thursday, with rest days of Friday and Saturday, was, per the Superintendent's posted Hours of Service Assignment of Clerks, scheduled to work his assigned hours Monday, September 6, 1954, when, at about 9 A. M., this Clerk, William Graff, was notified by telephone that he should come to work at 5 P. M. instead of 3 P. M., his regular starting time and that he would work until 12 Midnight, his regularly assigned quitting time.

On Monday, September 6, 1954, Julius Turner, Station Porter at Monroe, rate \$11.66 per day, assigned hours 4:30 A. M. to 8:30 A. M.; 9:30 A. M. to 1:30 P. M. (seven day per week position), Thursday through Monday, rest days, Tuesday and Wednesday, was, per the Superintendent's posted Hours of Service Assignment notice, scheduled to work his assigned hours on Monday, September 6, 1954, and he came to work at 4:30 A. M., his fixed and regular starting time, Rule 13 (a), entered upon his regularly assigned duties, and at 7:30 A. M. was verbally notified by the Ticket Agent that he would work only 3 hours and 30 minutes that day, or until 8 A. M.

The Carrier maintains a clerical force at Monroe Yard, assigned per Superintendent's posted Hours of Service Assignment notice, around the clock, (seven days per week) among which is the position of Yard Clerk, 3:59 P. M. to 11:39 P. M., rate \$14.06 per day, regularly assigned occupant A. J. Jones, Monday through Friday, rest days, Saturday and Sunday. Clerk Jones came to work at his regularly assigned starting time (Rule 13 (a)) at 3:59 P. M., Monday, September 6, 1954, and entered upon his regularly assigned duties. At 7:30 P. M., he was told he would work just four (4) hours, or until 7:59 P. M.

The Carrier maintains at Monroe, Louisiana, a force classified and rated, subject to the Clerks' Agreement, of Crew Callers, among which is the Caller position with assigned hours of 3:59 P. M. to 11:59 P. M. (seven days per week), Thursday through Monday, with rest days of Tuesday and Wednesday, the regularly assigned occupant of which is James M. Guice.

Caller Guice came to work Monday, September 6, 1954, at his regularly assigned starting time (Rule 13 (a)) at 3:59 P. M. and entered upon his regularly assigned duties, and at about 7:30 P. M. he was told he would work only four hours that day, or until 7:59 P. M.

At McGehee, Arkansas, located on the Little Rock portion of the Little Rock—Louisiana Division, the Carrier maintains a clerical force at its Yard Office, assigned seven days per week around the clock, among which is a

ment. Your Board has ruled in many awards that punitive penalty should not be imposed upon the Carrier where no work was performed. See Awards 2346, 2695, 2893, 2859, 3049, 3193, 3222, 3232, 3251, 3271, 3371, 3375, 3376, 3504, 3505, 3609, 3745, 3770, 3837, 3876, 3890, 3910, 4037, 4196, 4244, 4495, 4497, 4535, 4603, 4616, 4690, 4710, 4817, 4828, 4853, 4883, 4930, 4947, 5029, 5200, 5240, 5249, 5467, 5475, 5476, 5548, 5558, 5562, 5607, 5608, 5638, 5887.

There is no Agreement requirement or authority for the payment of these claims.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute involves time claims of clerks, callers, and station porters, seven in number, at Munroe, Louisiana, and McGehee, Arkansas, in which claim is made for the difference between the amount paid to each for holiday work on September 6, 1954 and 8 hours at the time-and-one-half rate. The facts are not in dispute. A question of rule interpretation constitutes the sole issue.

Claimants are occupants of seven-day positions with an assigned work week of five days. Each is regularly assigned to work on Monday. The day here involved is Monday, September 6, 1954, a holiday specified in the agreement. The dispute centers around Rule 27 (b), the pertinent part of which provides:

"Nothing herein shall be construed to permit the reduction of days for employes occupying Class A and B positions below five per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays, and no reduction in the number of days below five per week shall be made except by agreement between the Management and General Chairman, or when reducing forces or abolishing positions in accordance with Rule 14."

The assigned hours of these Claimants were posted at the respective locations of their positions. Each was specifically assigned to work holidays falling within his work week.

We point out at this point that under Article 2, Holidays, of the National Agreement, effective May 1, 1954, each regularly assigned hourly and daily rated employe receives eight hours' pay at the pro rata hourly rate of his position for each holiday falling within his work week. Each claimant received this payment. In addition to this payment, each claimant was paid time-and-one-half for the hours he worked on the holiday. Each claimant contends he should have been paid for eight hours at the time-and-one-half rate.

The Organization contends that Rule 27 (b) has no application to seven-day positions and that it applies only to five and six day positions. A mere reading of the rule shows that it applies to any holiday irrespective whether it falls in the work week of a five, six, or seven-day position. The Organization asserts that it has been the practice over the years not to apply Rule 27 (b) to seven-day positions. The rule is not indefinite or ambiguous and, under such circumstances, the plain meaning of the rule controls. Even if there had been such a mutual interpretation in the past, either party to the agreement could proceed to enforce the agreement as made at any time.

The Organization contends that Claimants were regularly assigned by the Superintendent of the Carrier to work on holidays on their regularly assigned hours. This is a correct reflection of the record. We point out that Rule 27 (b) contains an exception in the following words: "* * * excepting that this number may be reduced in a week in which holidays occur by the number of such holidays, * * *." Whether the assigned work week is

fixed by agreement or by bulletin, the Carrier under the foregoing rule may blank the holiday with impunity at any time. Awards 5668, 6385, 7033, 7134, 7136, 7137. A holiday within a work week creates an exception to the five-day work week rule. It may be blanked in whole or in part, or it may be blanked and the occupant given a call to perform the necessary work. This holding is supported by the language of Rules 25 (e) and 26 (b) which state in effect that an employee required to work on a holiday shall be paid at the rate of time-and-one-half with a minimum allowance of two hours. There is no basis for the contention that an employee used on a holiday is entitled to work eight hours at the pro rata rate. Awards 7033, 7136. He is entitled to eight hours pay at the pro rata rate if he does not work on a holiday, and he is entitled to time-and-one-half for the time worked, in addition thereto, with a minimum allowance of two hours. The rules governing work on holidays are special and controlling.

The Organization further contends that Rule 26 (b) leaves other rules of the agreement in force, such as the starting time rule and the eight-hour-day rule. This overlooks the fact that a day that is blanked in accordance with agreement rules, has no beginning and consequently no end insofar as such rules are concerned. Such rules lose their effectiveness where the day can be blanked with impunity in whole or in part by the Carrier.

A member of the Board suggests that our holding leaves the employee in a quandary as to whether or not he is to report for work on holidays at the time specified in his regular assignment. While this question is not presently before the Board, the answer is obvious. If the employee's assignment affirmatively requires him to work on holidays, and he has not been notified not to report for duty, he is required to report and is entitled to a minimum allowance of two hours pay if he is not used. It is a continuing notice to work his regular hours on holidays unless it is revoked by the Carrier. If his assignment does not affirmatively require him to work on a holiday, he is not required to report for work unless he has been directed by the Carrier to do so. Under the latter circumstances, a holiday is considered an unassigned day. Under such circumstances he cannot give himself a call under the call rule. He should not report for work unless directed to do so by the Carrier. Award 5668.

The Organization contends that Section 5 of the National Agreement, effective May 1, 1954, has some bearing on the controversy. That section provides:

"Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employee on a holiday."

In other words, the rules governing holiday work were not changed. The National Agreement provided for an additional eight hours pay at the pro rata rate, leaving the time-and-one-half rate to apply to work actually performed on holidays. The awards we have cited state the rule as it was prior to May 1, 1954. We have applied them in accordance with the cited Section 5. The practices referred to in Section 5 are necessarily valid practices resulting from mutual interpretations of indefinite or ambiguous rules. None such exists in the present case.

For reasons stated, a denial award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.