Award No. 12489
Docket No. CL-12218

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement when, on Saturday, June 6, 1959, it moved three (3) regularly assigned Receiving and Check Clerks and one (1) regularly assigned Warehouse Stowman from the seven-day per week Freight Warehouse operation at Seventh Street and Gratiot Street Warehouses, to its five day per week Freight Warehouse operation at Miller Street, St. Louis, Missouri, and required those employes to perform the work at Miller Street Freight Warehouse that is regularly assigned to and performed by employes at Miller Street Freight Warehouse, Monday through Friday, who were off duty on their assigned rest days, which was in violation of Rules 24, 25 (f), and related rules of the Clerks' Agreement;

2. The Carrier shall be required to compensate the three regularly assigned Receiving and Check Clerks and the one regularly assigned Warehouse Stowman for Saturday, June 6, 1959, as follows:

W. D. Daly, Receiving and Check Clerk 8 hours @ punitive rate of $3.4875 hr.	$27.90
T. E. Garrison, Receiving and Check Clerk 8 hours @ punitive rate of $3.4875 hr.	27.90
M. W. Miller, Receiving and Check Clerk 3 hours @ punitive rate of $3.4875 hr.	10.46
George Bogan, Stowman 8 hours @ punitive rate of $3.24 hr.	25.92
Total claim	$92.18

The above listed employes were the incumbents of the work performed and were off duty on their assigned rest days, but were available and should have been used on their rest days.

With respect to the application of Rule 24 in this dispute: A portion of the first sentence of Rule 24 eliminates this claim as a violation of the provisions of Rule 24, which states:

> "(a) Where work is required by the Carrier to be performed on a day **which is not a part of any assignment,** * * *"
> (Emphasis ours.)

It cannot be said that the work performed here in question was not part of any assignment; in fact, the work in question was performed by employes regularly assigned to work the claim date and the kind of work to which they were regularly assigned to perform. Regarding the use of the extra employes, the Carrier has never been restricted in its use of extra or unassigned employes to supplement the regular assigned forces to meet the exigencies of service. The Employes recognized this fact when they eliminated claims resulting from the use of the extra employes at Miller Street on Saturday, date of claim. As a matter of fact, the Carrier is at liberty to use extra or unassigned employes to supplement the regular force, regardless of the provisions of Rule 24.

Your Board held in all of the above cited awards that the Carrier could use its platform employes at St. Louis interchangeably between facilities, and that this could not be considered a suspension of work within the meaning of Rule 25(f). It has always been the position of the Carrier that the clear intent of Rule 25(f) is that employes will not be required to remain idle during the regular hours so that they might be used to an equal value of overtime hours for the day's pay. No employe was required to remain idle during regular working hours; in fact, the opposite result was obtained by using employes at Miller Street facility on date of claim. These transferred employes were not required to suspend work during the regular hours; they absorbed no overtime because they worked no overtime. Rule 25(f) does not touch the facts.

The Employes have failed to establish any Agreement violation in this case just as they were unable to establish any Agreement violation in those cases covered by the above cited awards, and the Carrier respectfully requests that the Board deny the claims.

OPINION OF BOARD: The essential facts in the instant dispute are not in issue. The Carrier maintains three warehouse facilities on the St. Louis Terminal Division which are approximately one mile apart within the confines of St. Louis, Missouri. Two of these facilities were operated on a seven-day basis and the other on a five-day basis at the time that the work in question occurred. Certain employes who normally worked at the facilities operating on a seven-day basis were moved to the other facility on Saturday, June 6, 1959, a day when it would have been closed except for the exigencies of service. The work required was in the same class or type regularly performed by said employes.

Claims were filed on behalf of the warehouse employes regularly assigned to work five days per week, Monday through Friday, with rest days on Saturday and Sunday. The Organization contends that said Claimants are entitled to be compensated at the punitive rate on account of not being called to perform the work in question on June 6, 1959, an assigned rest day for all four. The pertinent provisions of the current Clerks' Agreement which the Organization alleges were violated, are as follows:

"RULE 24.

WORK ON UNASSIGNED DAYS.

(a) 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 40 hours of work that week; in all other cases, by the regular employe."

* * * * *

"Rule 25(f). Employes will not be required to suspend work during regular hours to absorb overtime."

In a prior dispute between the parties at the same locale, this Board held in Award 7223, that neither 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. That the word "location" as used in Rule 8(b) indicated the point an employe was required to report to and depart from duty, and such word was not necessarily restrictive to the extent that employes could not be used interchangeably between facilities when needed. This position was sustained in a series of awards involving the same parties (Awards 7223, 7224, 7226, 7227).

The Organization endeavors to distinguish these awards from the situation in the instant dispute by contending that the Carrier activated the facility in question on a Saturday, and that the work performed was unassigned, thus requiring the application of the provisions of Rule 24.

We cannot agree with this contention. Saturday was an assigned workday for the employes who performed the required work at the warehouse facility, usually closed on weekends. It having been established by previous awards that it is permissible within Rule 8(b) to require work to be performed interchangeably between facilities and absent any evidence that the work load was in excess of that capable of performance during the assigned hours, we find that the provisions of Rule 24 and 25(f) were not violated by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1964.

LABOR MEMBER'S DISSENT TO AWARD NO. 12489, DOCKET CL-12218

We believe the Referee erred in his decision.

The work in question was performed on Saturday at a location where heretofore positions were worked only Monday through Friday.

A special rule, Rule 24(a) "Work on Unassigned Days", provides that:

> "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 40 hours of work that week; in all other cases, by the regular employe."

Those who performed the work were not **available extra or unassigned** employes, but were, in fact, employes **regularly assigned** to work that day at **other** locations. This rule is specific and the regular employes who perform this work Monday through Friday should have been called to perform this work on Saturday, consistent with the rule.

The Referee contends in his opinion that this dispute is similar to Award No. 7223 between the same parties. With that we disagree. In the previous Award, claim was filed for additional compensation under Rule 25(f) for those employes who **actually** performed the work. This dispute is just the reverse. This claim is in behalf of the employes that were denied the work; for that reason there is no similarity.

The Board has held that a specific rule supersedes a general rule; the issues involved in Award 7223 and this dispute are not similar.

For these reasons, we dissent.

C. E. Kief
Labor Member