

Award No. 13809

Docket No. CL-13810

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5249) that:

1. Carrier violated the Clerks' Agreement when on Sundays, May 28, June 4, 11 and 18, 1961, and on Saturdays, June 10 and 17, 1961, it failed and refused to compensate James Hubbard and Earl Lawson, Class C employees (Laborers) at the time and one-half rate of pay for work performed in excess of 40 hours in their work weeks at the Miller Street Freight Warehouse, handling and stowing freight, after they had worked all or part of their 40 hour work weeks at the Missouri Pacific Building at 13th and Olive Streets, in moving desks, furniture, files and records in offices in that building, which service in excess of 40 hours in their work weeks at the pro rata rate was in violation of Rules 21, 24, 25, 26, and related rules of the Clerks' Agreement.
2. Carrier violated the Clerks' Agreement when on Sundays, May 28, June 4, 11 and 18, 1961, and on Saturdays, June 10 and 17, 1961, it failed and refused to utilize the services of N. E. Monroe and George Bogan, regularly assigned Class C employees (Laborers) to perform the work of handling and stowing freight at the Miller Street Freight Warehouse, but instead utilized junior Class C employees (Laborers) James Hubbard and Earl Lawson to perform that service, after they had already worked 40 hours in their work weeks at the pro rata rate, in violation of Rules 21, 24, 25, 26 and related rules of the Clerks' Agreement.
3. Carrier violated the Clerks' Agreement when, on Tuesday, June 6, and Wednesday, June 7, 1961, it failed and refused to utilize the services of Robert Bonnett, unassigned Class C employee (Laborer) to perform the work in the Missouri Pacific Record Room at 16th and Washington Avenue, St. Louis, Missouri, consisting of handling and storing of records, but instead, utilized the services of Joseph E. Brown, a Junior Class C employee (Laborer) to perform that service in violation of Rule 14 (i) and related rules of the Clerks' Agreement.

4. Carrier shall compensate claimants James Hubbard and Earl Lawson the difference between the pro rata rate of \$2.25 per hour allowed, and the time and one-half rate of \$3.375 per hour, to which entitled, for eight hours on each claim date, or, a difference of \$9.00 per day, as follows:

James Hubbard - May 28, June 4, 10, 11, 17 and 18, 1961, a total of 6 dates @ \$9.00, amount.....\$54.00

Earl Lawson - May 28, June 4, 10, 11, 17 and 18, 1961, a total of 6 dates @ \$9.00, amount.....\$54.00

5. Carrier shall compensate N. E. Monroe and George Bogan, regularly assigned Class C Laborers, each for eight (8) hours at the time and one-half rate of \$3.375 per hour, amount \$27.00, for each date, May 28, June 4, 10, 11, 17 and 18, 1961, total of 6 days, total amount \$162.00 each.

6. Carrier shall compensate unassigned Class C employee (Laborer) Robert Bonnett, for eight hours at the pro rata rate of \$2.25 per hour, amount \$18.00, for each date, June 6 and 7, 1961, total of claims \$36.00.

EMPLOYEES' STATEMENT OF FACTS: The General Offices of the Missouri Pacific Railroad are located in a 22-story building at 13th and Olive Streets, St. Louis, Missouri, known as the Missouri Pacific Building. The Missouri Pacific permanent record storage is in a 8-story brick building, leased by the Missouri Pacific Railroad, and located at 16th and Washington Avenue, St. Louis, Missouri, which is approximately five blocks west and north of the Missouri Pacific Building. The facility at 16th and Washington Avenue is known as the "Record Room - 16th and Washington." The Missouri Pacific permanent records are stored in that building.

For thirty or more years when it was necessary to shift the office furniture, files and records around in relocating offices on the same floor or from one floor to another in the Missouri Pacific Building, or necessary to have a laborer force handle the records to be stored at the Record Room at 16th and Washington, the Carrier has provided such laborer force by requiring Class C Laborers on the St. Louis Terminal seniority roster and district, which is under the jurisdiction of the St. Louis Terminal Station Agent, to go from the freight houses to those buildings to perform that manual work.

The Miller Street Freight Warehouse is located about two miles from the Missouri Pacific Building.

Whenever any laborer force was needed at either the Missouri Pacific Building or the Record Room at 16th and Washington, the Agent or General Warehouse Foreman at the freight house was notified of the number of laborers needed, and the General Warehouse Foreman would arrange for the required number of laborers to report at those locations.

Usually, in order to save time, the laborer force to be used at the Missouri Pacific Building or the Record Room was lined up the preceding day, so that they could report directly to either or both of those locations and save the time of first reporting at the freight house, and then going to the Missouri Pacific Building or Record Room. The laborer force thus di-

loughed employees, in any capacity, even though such service is outside the Scope of the Clerks' Agreement. To sustain the Employees in their contention in the instant dispute would impose a great burden on the Carrier as well as all the furloughed employees, who, in many instances, must depend on outside employment to supplement their income from the Carrier for such extra work as they are able to perform. In addition, the Board would, in effect, be writing a rule for the parties, which the Board is not empowered to do under the provisions of the Railway Labor Act, as amended.

In view of the fact that there is no rule violation in the instant case, and the further fact that the Board does not have the authority to write one, the claims must be denied.

OPINION OF BOARD: All of the employees listed in the claim have Class C (Laborer) seniority on the Carrier's St. Louis Terminal Station and Yard Clerks' roster. At the time involved in this dispute, Claimants Monroe and Bogan were regularly assigned Monday through Friday as Class C Laborers in Carrier's Miller Street Freight House, which is one of three freight facilities in the St. Louis Terminal Division. Claimants Hubbard, Lawson and Bonnett, and also employee Joseph E. Brown, were furloughed Class C Laborers who were subject to call for extra work.

The Carrier's General Office Building is located about two miles from the Miller Street Freight House, and is not a part of the St. Louis Terminal Division. Among the Carrier's employees in the Office Building is a maintenance force which is not covered by any labor agreement. The Carrier also has a record storage room located in a separate leased building at 16th and Washington in St. Louis. Carrier maintains inside this building a force covered by the Clerks' Agreement—having one seniority roster for Class A and B employees and another seniority roster for Class C employees. Carrier states these employees' rights are restricted to the handling of records inside the Record Room.

In late May and early June, 1961, there developed a need for considerable movement of office equipment and files in Carrier's General Office Building due to a rearrangement of departments and personnel. Since this activity involved more work than the regular building maintenance force could perform, the Carrier used furloughed Class C Laborers Hubbard and Lawson four or five days each week (Tuesday through Friday or Monday through Friday) for four consecutive weeks in connection with said work. On Saturday and Sunday of each of these weeks (except for Saturday, June 3), Carrier also used these two employees for work at the Miller Street Freight House. They were paid 8 hours per day at straight time rate for their work at the General Office Building and also for their Saturday and Sunday work at the Miller Street Freight House.

The Organization contends that Claimants Hubbard and Lawson were entitled to be paid a time and one-half rate for all time worked in excess of 40 hours during each of the weeks involved. It further is asserted that Claimants Monroe and Bogan had a prior right to the subject Saturday and Sunday work at Miller Street Freight House because they were regularly assigned at that facility, and were available each Saturday and Sunday, which were their rest days, and also because extra and unassigned Laborers Hubbard and Lawson had already worked 40 hours during the weeks in question.

On June 6 and 7, 1961, furloughed Class C Laborer Brown was used for the handling and storing of Carrier records at the 16th Street Record Room.

The Organization contends that furloughed Laborer Bonnett, who is senior to Brown, was entitled to this work instead, because of Bonnett's greater seniority.

The record indicates that for thirty years or more furloughed (and, in some instances, regularly assigned) Class C Laborers holding seniority on the St. Louis Terminal seniority district and roster have been used from time to time to move furniture, files, etc., in the General Office Building and to handle records to be stored in the 16th Street Record Room. The Organization states that prior to the period involved in this claim, furloughed Laborers used for this work at the involved locations were called in order of their seniority. The evidence is that both during the period here involved and in prior years the Carrier paid the regular contract rate for Stowman for the work performed in the General Office Building and at the Record Room by Class C Laborers on the St. Louis Terminal District and Roster.

The Carrier's defense to this composite claim is that the work in dispute is outside the scope of the Agreement, and, therefore, the Agreement rules do not apply to the performance of this work by the Class C Laborers in question. More specifically, it is urged that time worked by these laborers at the General Office Building cannot be counted in determining whether the employees have worked over 40 hours a week and thus whether overtime pay is due. It also is asserted that it is not obligatory to comply with the seniority provisions in calling employees for this work.

We have seen that the General Office Building, but not the Record Room, are outside the coverage of the Clerks' Agreement. But, in any event, both locations are outside the seniority district of Class C Laborers on the roster of the St. Louis Terminal. Thus, the Carrier has no contract obligation to use any of these Laborers at those locations. But, if the Carrier elects to use Class C Laborers on the Terminal roster at either the General Office Building or the Record Room, we think it undertakes an obligation to apply the Agreement rules which have been negotiated for this category of employees. We, therefore, conclude that when furloughed employees are used for such work, the Carrier is required to call such employees in seniority order. We further conclude that such work must be counted in determining when the employees have worked 40 hours per week.

In view of the above conclusions, it follows that in accordance with Rule 25 (c), Claimants Hubbard and Lawson were entitled to be paid at time and one-half rate for all hours worked in excess of 40 hours during each of the four weeks in question. Since all of the work in excess of 40 hours per week which these two men performed was done at the Miller Street Freight House, it follows that under Rule 24 (Work on Unassigned Days) Claimants Monroe and Bogan had a prior right to this work for which they were available. The compensation claim for the latter two employees will be granted at pro-rata rate. There also is merit to the claim of Laborer Bonnett for pro-rata pay for the two days when a junior furloughed Class C Laborer was used at the Record Room.

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 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 violated.

AWARD

Claim sustained in full, except that the compensation for Claimants Monroe and Bogan shall be at pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.