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Award No. 11  
Docket No. 11

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES  
versus  
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. When, on Saturday, January 28 and Saturday, March 24, 1956, the Carrier utilized Chief Accountant J. P. Carroll, seniority date of July 13, 1918, Auditor Station Accounts office, to work on authorized overtime and failed and refused to utilize Clerk L. G. Echelmeyer, the incumbent of the work, whose seniority date is June 18, 1947 (1), and who was qualified and was justly entitled to perform the work and be paid for same;
2. Clerk L. G. Echelmeyer shall be reimbursed for the wage loss he was forced to sustain, amounting to \$50.16, account Carrier's violation of Agreement, Rule 25 (b).

FINDINGS: It appears that the overtime work performed in this case was not of the same nature as that normally performed in the office. Rule 25(b) contains an interpretation for the application of that rule to the Accounting Department which provides in part as follows:

"When it is necessary to work overtime on work that does not constitute the regular assigned duties during regular assigned hours, the senior qualified employees assigned to positions performing work of the same nature or class and in the rate range comparable to the rates attaching to the work to be performed will be utilized in the order of their seniority \* \* \*."

It is shown that the work performed was in some ways similar to the regular duties of the claimant. There is no showing as to what are the regular duties of the Chief Accountant who performed the work. In fact, the Carrier declined the claim, not on the basis of similarity of work as required by the rule, but on the basis of using the senior qualified employee in the office. Under the circumstances shown, the claim must be sustained.

AWARD: Claim sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 166

/s/ Dudley E. Whiting

Dudley E. Whiting -- Chairman

/s/ Ira F. Thomas

I. F. Thomas - Employee Member  
St. Louis, Missouri  
January 17, 1957

/s/ G. W. Johnson

G. W. Johnson - Carrier  
Member

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INTERPRETATION

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
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VERSUS  
MISSOURI PACIFIC RAILROAD COMPANY

The request for interpretation in this matter is due to the fact that the Board made no mention of the Carrier contention that Awards of the Third Division have held that the penalty rate for time not worked is pro rata.

We recognize that under the awards pro rata is generally the correct penalty rate for time not worked; however, there are some exceptions to that rule when the work cannot be performed at pro rata under the Agreement such as, for example, holiday service. The work here involved comes within such an exception because the work could not be performed under the Agreement at pro rata so the Board found that the claim should be sustained as requested.

SPECIAL BOARD OF ADJUSTMENT NO. 166

/s/ Dudley E. Whiting  
Dudley E. Whiting - Chairman

/s/ I. F. Thomas  
I. F. Thomas - Employee Member

/s/ G. W. Johnson  
G. W. Johnson - Carrier Member

St. Louis, Missouri  
April 11, 1957