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Award No. 14
Docket No. 14

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:

- (a) When on Sunday, May 13, 1956, and subsequent Sundays, it compensated employees for their services performed as Foremen, Assistant Foremen, Clerks and Laborers, at Carrier's Kansas City, Missouri Freight House at pro rata rate of pay;
- (b) That each employee (claimant) named in statements appended hereto and made a part hereof, be paid the difference between pro rata and overtime rate for services performed on Sundays, May 13, 20, 27, June 3, 10, 17 and 24, 1956, and like restitution be made to all employees for services performed on subsequent Sundays until the rule violation is corrected.
(Statement of individual claimants in the record not reproduced.)

FINDINGS: In accordance with the provisions of Rule 26(c), the parties entered into a Memorandum of Agreement on March 16, 1955, for the establishment of 7-day positions in the Freight House at Kansas City, Missouri, which contained a termination clause as follows:

"It is further understood that this Agreement is made for the purpose named herein and same may be cancelled by 30-day written notice of one party to the other."

It appears that the Organization gave notice to cancel the Agreement on April 12, 1956. The Carrier denied the Organization's right to terminate the Agreement because there had been no change in the need for 7-day positions and the purpose stated in the Agreement rendered the notice of cancellation ineffective.

We find that the Agreement was subject to cancellation in accordance with its terms by a 30-day written notice of either party to the other.

Time claims for punitive pay for Sundays were filed commencing in May 1956. It is our view that such time claims were premature because there was a bona fide dispute as to whether the Agreement could be cancelled based on sufficient substance that the Agreement could not be considered cancelled until this decision has been rendered. Accordingly, the time claims are dismissed.

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In other words, we find that upon resolution of the dispute as to whether the Agreement of March 16, 1955, could be cancelled, the parties are properly relegated to their respective positions under the schedule rules that existed prior to the execution of such Agreement.

AWARD: The time claims covering Sundays, starting May 13, 1956, are dismissed. The Memorandum of Agreement of March 16, 1955, can properly be cancelled upon 30-day written notice of one party to the other and is accordingly found to be now cancelled.

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/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