

C
O
P
Y

Award No. 27
Docket No. 27

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated Rule 25(b) of the Clerks' Agreement when, on November 17, 18, 19, 20 and 21, 1956, it used employes junior to W. E. Chase and Julius Kasselmann for overtime work in Auditor Freight Traffic office which these employes were entitled to perform and should be required to pay these claimants an equal number of hours pay at the time and one-half rate.

FINDINGS: The confronting claims are brought on behalf of Clerks Kasselmann and Chase that they be compensated for all wage loss at the punitive rate for the dates indicated in the above claim account not being assigned certain overtime work.

It appears that Clerks Berry and Marco were not connected with the Senior Interline Division but that the locale of their work performance, for practical purposes, was in close proximity thereto.

On the basis of the record as a whole, it appears that during the time in question the claimant clerks, Kasselmann and Chase, as well as Clerks Berry and Marco (who actually performed the work in question), had been engaged in the performance of clerical work consisting of "placing of divisions" and to "balance Interline Received accounts" during their regularly assigned hours.

It further appears that the claimants hereto were senior to those who performed the work, for which reason they were entitled (within the meaning of Rule 25(b)) to perform the work in question.

It is noted that these claims are brought seeking reparations at the punitive rate. A preponderant number of awards of the Third Division hold that the correct penalty rate for time not worked is the pro rata rate rather than the punitive rate. No work was here performed. The confronting claims are sustained only at the pro rata rate.

AWARD: Claims sustained at the pro rata rate.

SPECIAL BOARD OF ADJUSTMENT NO. 166

/s/ Livingston Smith
Livingston Smith - Chairman

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

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

St. Louis, Missouri
September 20, 1957

C O P Y

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

Interpretation of
Award No. 27
Docket No. 27

The parties hereto are in dispute concerning the intent of the Board when it entered its Award: "Claims sustained at the Pro rata rate", and have requested that the Board interpret said Award.

This dispute is occasioned by the fact that the Award did not specify whether the claims sustained were to be paid at the pro rata rate of the position worked or the pro rata rate of the position to which assigned.

Rule 25(g) of the applicable Agreement, effective September 1, 1952, reads as follows:

"Overtime will be computed by showing the overtime hours at the established overtime rates, and shall be entered on the payroll records as a separate item. All Overtime will be paid for at the overtime rate of the position worked."

For the reasons stated in the concluding paragraph of the "Findings", claims were sustained at the pro rata rate.

This Board has no authority to revise or amend any of the provisions of the Agreement negotiated and accepted by the parties hereto.

In view of the fact the last sentence of Rule 25(g) quoted above provides that all overtime will be paid for at the overtime rate of the position worked, it was the Board's intent to sustain the claims at the pro rata rate of the position on which the work was performed, and not at the rate of the positions to which the claimants were regularly assigned.

SPECIAL BOARD OF ADJUSTMENT NO. 166

/s/ Livingston Smith -- Chairman

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

/s/ Ira F. Thomas -- Employee Member

January 27, 1958