ORG. FILE 8-50
CARRIER FILE D-2868
NRAB FILE CL-9683

AWARD NO. 23
CASE NO. 23

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES TO DISPUTE: The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on May 30, 1956, it discontinued the holiday assignment of the Motor Operator position at Joplin, Missouri, and assigned the work to a Group 1 Yard Clerk on holidays and when on June 11, it discontinued the holiday assignment on the Motor Operator-Janitor position at Joplin, Missouri, and assigned the work thereof on holidays to a Group 1 Yard Clerk.

(2) That G. L. Garde, occupant of the Motor Operator position, now be allowed a day's pay at time and one-half for the holiday, July 4, 1956.

(3) That G. L. Provins, occupant of the Motor Operator-Janitor position, now be allowed a day's pay at time and one-half for the holiday, July 4, 1956.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

This claim presents the question whether the Agreement prevents the Carrier from discontinuing the holiday assignment of a Group 3 Motor Operator-Janitor position and assigning the holiday work to a Group 1 Yard Clerk position.

The holiday work in question was part of the regular assignment of two Group 3 positions: a Motor Operator position (7:45 AM to 4:45 PM) and a Motor Operator-Janitor position (3:00 PM to 11:00 PM). The work required to be performed on the holiday included the operation of a fork-lift in the handling of mail and baggage from a train due 8:00 AM and from another train due 8:45 PM.

It is established by the record that the holiday work was part of the regular assignments of these two Group 3 positions during the work week; and that, prior to the abolishment of the holiday assignment, the holiday work had always been assigned to these two Group 3 positions. Award 4827 and SBA No. 194 Award 9 therefore have no application here.

First. We held in SBA No. 194 Award 19 that, while in the absence of a rule to the contrary, a Carrier may not assign work across group lines, this Agreement does not prohibit such assignments.

The situation presented by this claim, however, has nothing to do with group lines, since the claim is based upon specific rules of the Agreement relating to holiday work; and these rules protect this work to these claimants under Rule 43 (g).

Second. Rule 43 (g) provides:

> "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."

In its decision No. 2, the Committee set up under Article VI of the Agreement of March 19, 1949 (Forty Hour Week Agreement) interpreted the provisions of Section 3 (i) of that Agreement (which is Rule 43 (g) in part as follows:

> "Where work is required to be performed on a holiday which is not a part of any assignment, the regular employe shall be used."

This principle is further confirmed by Award 7134, in which it was held:

> "From this it is plain that if holiday work is assigned to a regular employe performing the work in the work week in which the holiday occurs, it belongs to the regular employe by virtue of his assignment. If the holiday work is not assigned, it likewise belongs to the regular employes under the interpretation of the Forty-Hour Week Committee. But in either instance, holiday work may be blanked without penalty under Rule 4-A-3."

Third. There is further the provision of Rule 48, the last sentence of which provides that "employes regularly assigned to class of work for which overtime is primarily necessary shall be given preference." The class of work here performed on the unassigned holidays of these Group 3 positions was the same on these holidays as on the five days of the employes' assignments. In connection with Rule 48 the Carrier agreed in its file 3001-53 dated November 15, 1946 as follows:

> "In connection with this subject you brought up Rule 48 and I advised you that time worked on Sundays and holidays would be considered overtime and such overtime handled on basis provided for in Rule 48. This, of course, not to apply to positions necessary to the continuous operation of the Railway where regular rest day is assigned under Rule 50."

When the holiday assignment on these two positions was abolished, the holidays became unassigned holidays on these two positions. The use of Group 1 employes to perform this work to the exclusion of the employes to whom the work was regularly assigned on other days of the work week constituted a violation of the Agreement.

Fourth. Rule 44 (b) of the 1946 Agreement provides.

> "Employes called to work onSundays or assigned day off duty in lieu thereof and specified holidays, shall be allowed a minimum of eight hours at time and one-half rate, except as otherwise provided in Rule 50 (Sunday and Holiday Work)."

There is a dispute pending before the Forty Hour Week Committee involving Rule 44 (b) as to which the parties have agreed that the "Question at Issue" is "Revision of Rule 44 (b) in the current Agreement."

The Carrier proposal reads: "Employes called to work on holidays specified in Rule 50 shall be allowed a minimum of eight hours at time and one-half rate." The adoption of this proposal would have the effect of removing rest days from the operation of Rule 44 (b) and covering them under Rule 44 (a), which would make this claim sustainable for no more than a minimum call.

The Organization made no proposal, contending that "the rule should not be disturbed in any way" in view of Article II Section 3 (c) of the Forty Hour Week Agreement which provides that "existing provisions relating to calls shall remain unchanged." If the Organization position should be adopted, this would make the claim sustainable as presented for eight hours at the pro rata rate.

The Organization contends that, in view of the Carrier's proposal and Article III Section 3(d) of the Forty Hour Week Agreement which provides that "existing provisions relating to pay for holidays shall remain unchanged," Rule 44 (b) is not in dispute and is hence operative insofar as holidays are concerned, whatever the case may be with respect to rest days.

But we view Rule 44 (b) in its entirety as having been put within the scope of the submission to the Committee. The contention of the Organization involves treating the Carrier's proposal as an isolated concession of the continuing operative effect of the portion of Rule 44 (b) relating to holidays; and it also involves a determination of the meaning and application of Article II Section 3 (c) and (d) of the Forty Hour Week Agreement, which is part of the Committee's function rather than ours.

A W A R D

Item 1 of the claim sustained

Items 2 and 3 of the claim remanded for final disposition in accordance with the decision of the Forty Hour Week Committee and this award.

/s/ Hubert Wyckoff
Chairman

/s/ T. P. Deaton
Carrier Member

/s/ F. H. Wright
Employe Member

Dated at St. Louis, Missouri August 6, 1954