12-23-58-original
12-25-58-rewrite
12-26-58-final draft

C O P Y

Award No. 3
Docket No. CL-6042

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 239
(Clerks' Board, St. Louis, Missouri)

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on Monday, September 5, 1955, holiday, an unassigned day for Clerks subject to the application of the Agreement to work, the Carrier, following notice or call given regularly assigned Receiving-Check Clerks B. Staelens, J. McNamee, Carmen Roy and T. V. O'Brien at Seventh Street, 8AM-12 Noon; 1PM to 5PM, to report for work on their regular positions at 8AM and work their regular hours on other days at Seventh Street, instructed these Clerks, immediately after they reported for work at Seventh Street Station, to go to Main and Gratiot Streets, several city blocks distance away from Seventh Street Station, and work as Receiving-Check Clerks, which they did until 12 Noon, when they were returned to Seventh Street where they worked, 1PM until 5PM.

2. Senior Clerks J. Tritschler, J. S. Parsons, H. C. Jarrett and J. J. Murray, regularly assigned to Miller Street Station (same roster and seniority district) each shall be compensated for four hours at punitive hourly rate of $2.715 per hour, or $10.86, which they claimed they were entitled to by virtue of their seniority rights, when the Carrier transferred the four junior clerks as in "1" hereto to Gratiot Street on an unassigned day, to perform work that was authorized overtime.

OPINION OF BOARD:

This dispute brings to surface the undercurrent of unrest there is in a pool of conflict over Board Awards, and over holiday recognition as provided by the Rules of Agreement.

We plunge into the turbulent waters with little ado about the facts except what we deem to be factual, as distinguished from conclusions, in the claim as above stated, and for some later mention of facts in the discussion to follow.

Monday, September 5, 1955, was a designated holiday under the Agreement, but this is not to say that work could not be required of employes on that day if paid the rate of time and one-half with a minimum allowance of two hours. See Rule 26(b) Holiday Work.

When a designated holiday falls on a workday of an established workweek of an assigned employe (as distinguished from an extra or unassigned employe) if he does not work by reason of holiday observance, he, nevertheless, is paid at the rate of the position to which assigned for the recognized holiday. When the designated holiday does not fall on a workday of his workweek no holiday pay is due him. All this is readily apparent from the language found in Article II, Section 1 of the 1954 Agreement.

Since a designated holiday, that occurs on a workday of his workweek, affords the assigned employe an additional "day of rest" during his workweek if he does not work, there has developed some uncertainty in certain areas about the proper application of Rule 24 in the confronting Agreement which 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."

The above Rule actually is no part of the holiday schedule and was negotiated in a different setting involving the 40-hour workweek. The Rule was designed primarily to hold overtime compensation for working more than 40 hours in a scheduled workweek to a minimum if work had to be performed on assigned rest days; and, further, to give the regular employe the inherent advantages of his

assigned rest days when others could protect the service, in addition to spreading the work among available extra or unassigned employes, so they, too, might have some chance to benefit from the reduced workweek on assigned positions.

Nevertheless, Carrier's right to blank assignments and the analogy some have seen between assigned rest days and designated holidays that occur on a workday of the established workweek when the regularly assigned hourly and daily rated employes are scheduled off, has given rise to the belief in some circles that a holiday, which incidentally must fall on a workday of his workweek before the employe is entitled to holiday pay, is to be regarded as a "day which is not a part of any assignment". The fallacy should be readily apparent from what has been said, but it may serve to remove remaining doubts of others if closer attention is given to the objects and purposes of the holiday Rules as same were intended to be applied in actual practice.

Account continuous operations in the railroad industry and experience gained under the 40-hour week, it was known that service would have to be protected for seven days on some positions but on others a five day assignment was all that would be required. Additional positions were created for relief on seven day operations to absorb overtime on the basis of assigned positions for five days, with only an occasional need for working the incumbent overtime at punitive rates of pay. It was a simple matter to make the holiday Rules conform, subject to recognized distinctions.

One notable distinction is the punitive (overtime) rate of pay that is provided in Rule 26(b) applies to holiday work as such when performed by an assigned or the senior available qualified employe on a designated holiday.

With the employe's workweek as the base, Carrier was left with the election to schedule or not schedule work on assigned positions for a designated holiday falling on a workday of the established workweek (as in the past when positions were

either worked or blanked) subject to appropriate holiday pay.

The hazards of scheduling an assigned employe off on his rest day, and situations thereafter arising for protecting the service, were known. The same could arise in connection with holiday observance. Authorized daily overtime to be worked before or after assigned hours also needed to be protected when situations arose. In these areas, there seemingly was a common purpose to be served for which Rule 25(b) (3) was designed.

"In any situation arising", as that expression is used in the last cited Rule, means to us that if an unexpected need for service arises on a designated holiday that falls on a workday of his workweek which the occupant of the position normally is not expected to work, the service thereupon may be protected on a call basis and classified as authorized overtime work. We do not see where the Rule has any other application to holiday observance.

If the foregoing reasoning appears as sound to others as it seems to us, it would only serve to distort language of the Rules before us to give it any other meaning for purposes of resolving the dispute here at issue.

Attention now is turned to Third Division Awards 7223, 7224, 7225, 7226, cited and relied upon by the Carrier in its submission. All are denial Awards on this property between the same parties and involving the same Agreement, differing, however, as to Rules, none of which relate to work on holidays.

The first of the disputes covered by those Awards primarily involved bulletining of assignments. The effect of the Award was to relieve the Carrier of any requirement to limit the advertisement to cover only one of the stations or facilities there in question (Award 7223). The second dispute was over moving regularly assigned Receiving - Check Clerks from their "bulletined and established" location and station and warehouse platform facility on the assigned work day. The

Division held the Agreement was not violated (Award 7224). As to the remaining disputes the Division saw enough by way of analogy to cause it to write them off under principles decided in the first two Awards, with one added observation "that the Petitioners failed to sustain the burden of proving a violation" (Award 7225, 7226).

Whatever criticism is levelled against the above Awards, it cannot be successfully contended before us that the Division was ill-advised or not fully informed. We feel the Organization must agree, because it is largely content to rest its case before us on the premise that none of the foregoing Awards undertakes to say what should be done in a dispute like the one here at issue. Even so, the principles promulgated by those Awards are far reaching.

We doubt, however, that the Division has gone so far as to say that the incumbent of a position at one station and warehouse platform facility is the incumbent, for all intents and purposes, of the same position at another of the related locations, although there clearly appears to be nothing now to restrict the incumbent of any position to the work area of any location that is encompassed by those Awards. To extend those Awards, however, beyond what is manifestly intended, would be almost to ignore any duty to bulletin the different positions, and would make it impossible to distinguish work assignments in the many particulars that all the Rules require.

We believe enough has been said up to this point to keep our head above the churning waters long enough to take a long, careful look at the dispute with which we are confronted.

In summary, we do not hold with the argument that a designated holiday is a "day which is not a part of any assignment". Neither do we hold with any likely view that the incumbent of a position at one station could be sent to work a designated holiday not scheduled to be worked by the occupant at another, whether to

offset the minimum time for which he was entitled to be paid for reporting on his own position, or whether to eliminate the requirement that the employe entitled to work the position on a holiday be called out.

But in the instant case all positions were being worked at the Gratiot Street freight house. Claimants were not working on the holiday but their positions were at the Miller Street facility. Monday was a regular workday of the 7-day operation at the Seventh Street facility. The Check Clerks reported as usual at the Seventh Street facility, account it was expected that they would be needed to carry on the 7-day service, but on this particular holiday the expected traffic did not materialize. At this point the Carrier had an election to send them home upon payment of two hours at premium rates of pay to each Check Clerk reporting; or to hold them for later service in the day. It appearing that, in the meantime, their time could be used to advantage at the Gratiot Street Station without displacing any regularly assigned employe, the Carrier had still another election in reliance upon Awards 7223, 7224, 7225, 7226, which it exercised and which was proper. Those conditions as stated do not give rise to a valid claim.

FINDINGS:

The Board, after oral hearing, and upon the record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as amended;

That jurisdiction over the dispute involved herein has been conferred upon this Board by special agreement; and

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That the Agreement by and between the parties to this dispute has not been violated.

A W A R D

Claim denied by order of:

Special Board of Adjustment No. 239

A. LANGLEY COFFEY /S/
A. Langley Coffey, Chairman

IRA F. THOMAS /S/
Ira F. Thomas - Employe Member

F. E. GRIESE /S/
Carrier Member

Dated at St. Louis, Missouri,
this 17th day of JANUARY, 1959