

12-30-58 Original draft
12-31-58 Final draft

C O P Y

Award No. 5
Docket CL-6242

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 the System Committee of the Brotherhood that:

- (1) Carrier violated the Clerks' Agreement when it failed and refused and continued to refuse to compensate Messenger Hans Frost, 23rd Street Yard Office, St. Louis, Missouri, in accordance with provisions of Rules 25 (b) and 26 (b) at the punitive rate for the holiday, Thursday, July 4, 1957, instead of at the pro rata rate when he was the incumbent of the authorized overtime work on the holiday.
- (2) That the Carrier shall be required to pay Messenger Frost the difference between the pro rata rate of \$14.24 allowed, and the punitive rate of \$21.36, to which he was entitled, amount \$7.12, account Carrier's failure to properly apply the Agreement.

OPINION OF BOARD:

On July 4, 1957, a designated holiday, there was a "wheel vacancy" on the 8:00 A.M. to 4:00 P.M. Messenger position. Pursuant to Rule 25 (b) Claimant was entitled to work the position and then double on to his regular assignment 4:00 P.M. to 12 M. The position was protected by a Relief Clerk instead, who was paid at the rate of time and one-half as the amount due an employee "required to work" on a holiday that is designated by Rule 26 (b).

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Claimant was paid the pro rata rate as penalty for not being called in his proper turn, since he was the incumbent of the position within the meaning of Rule 25 (b). The Employees contend that the payment for the violation should have been made at the time and one-half rate of pay and that is the issue in dispute.

It is to be noted here that Claimant worked his regular turn on the holiday for which he was paid the time and one-half rate for working and, in addition, was paid the pro rata holiday pay due him as a regularly assigned employee. In addition he was paid pro rata for not working the 8:00 A.M. to 4:00 P.M. turn claimed on the holiday.

Carrier holds that the Agreement does not require payment of the time and one-half rate of pay in settlement of a claim of the employee who performed no service.

The Employees find support in Third Division Awards 685, 5837, 7188, 8287; Special Board of Adjustment No. 122's Award No. 7; and the interpretation by Special Board of Adjustment No. 166 of its Award No. 11. The precedent is impressive and imposing, but this Board already is committed by its earlier Awards, to look more to the Rules of Agreement than to precedent, in order to avoid, if we can, practice in error.

Award 685 is not in point. Award 5837 is the first of the cited Awards to depart from the long established principle on the Third Division that where no work is performed by Claimant the pay should be only at the pro rata rate. The other Awards mentioned above fall in line. Award 7188, nevertheless, is worthy of special mention, since the very able Referee sitting with the Board when that Award was rendered has had no small part in promulgating and perpetuating the principle relied on by Carrier in this docket. Some of the claims for time not

worked covered by that Award were sustained at the pro rata rate and others at the time and one-half rate, depending solely upon whether a holiday was involved, the time and one-half rate being sustained for holidays. It is difficult to rationalize the distinction and the only basis for doing so here is to continue to follow the reasoning in Award 5837, that "the rate under the Agreement on a holiday was time and one-half the pro rata rate". We are not able to agree because it appears to us a different intent is expressed in the Holiday Rules.

The only rate that attaches to the position on the workday of the workweek during which a designated holiday occurs is the pro rata rate. See Article II, Section 1, August 21, 1954 Agreement. The time and one-half rate, as we view it, attaches to work on the designated holiday. See Rule 26 (b). Any other reasoning is contrary to the basic holiday concept that the employee have time for engaging in usual holiday pursuits without a reduction in pay during his workweek if the holiday falls on a workday of that workweek. Hence, the time and one-half rate is punitive and no more compensatory than any other pay practice involving work on rest days or authorized overtime.

The foregoing reasoning has some added support in Rule 25 (b) (3) which groups "authorized overtime to be worked before or after assigned hours, or on a call basis on a rest day or holiday", and classifies each as "overtime work".

The portion of Rule 25 (b) quoted in the Employees' submission applies only to authorized overtime to be worked before or after assigned hours, or on rest day vacancies. Only by reason of the punitive rate that attaches to work on a holiday does the confronting language have any meaning in a dispute over holiday pay. The Rule does serve to fix claimant's "incumbency rights" and does entitle him to be called in compliance with Rule 25 (b) (3), a right, incidentally he enjoyed in the

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instant case, in connection with authorized overtime to be worked before or after assigned hours since there was a punitive rate involved. Had it been claimed as such, the pro rata rate would have applied since Claimant performed no service, and we do not see how he is entitled to any more when he performed no work on the holiday during the hours claimed. The claim will be denied.

FINDINGS:

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

That Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

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 - Employee Member

F. E. GRIESE /S/
Carrier Member

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