

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS  
and  
MISSOURI PACIFIC RAILROAD COMPANY

Claim for E. W. Ginn and K. M. Forrest for four hours each at time and one-half for September 24, 1956, when Carrier assigned S. W. Clark to perform service "GM" office, St. Louis, while he was on leave of absence.

OPINION OF BOARD: The confronting claim is brought in behalf of two named claimants seeking reparations for four hours each at the punitive rate account of being denied the right to perform certain overtime work which it is alleged was improperly performed by an employee who was on an authorized leave of absence and, as such, was not subject to call nor permitted to perform the overtime work in question.

Position #10, whose occupant was temporarily absent account illness, was being filled by extra employee Warren who, on the date in question, did not report. The respondent called employee Clark, who was on an authorized leave of absence for educational purposes, at 8:00 p.m. on this date to perform certain telegraphic work. The said employee Clark performed eight hours of service. It is the performance of this work by employee Clark which forms the basis of this claim.

The respondent took the position that while admittedly it could not work an employee on an authorized leave of absence, their use of employee Clark arose under special and peculiar circumstances and was permissible under a letter over the signature of an Organization representative, such communication reading as follows:

"With reference to your letter of August 27th addressed to Mr. S. W. Clark in connection with protecting extra work in GM office while on leave of absence attending school under Public Law 550.

"Mr. Clark called on me and we discussed this situation, and I advised him that I would investigate further what might be done. This investigation develops that there would be objection by employees in that office to any employee who had been granted such a leave protecting the rest day relief work and any other kind of extra work except in emergencies.

"With this in mind I would have no objection to your using Mr. Clark for extra work in GM office in an emergency when no other employee was available."

The respondent took the further position that even though a technical violation might be present, in the absence of a showing of bad faith there was no justification for the granting of the reparations sought.

The Board is of the opinion that there was no emergency conditions existing at the time in question. The work was performed outside the hours of the position which would have ordinarily performed same. That the performance of this work was required is evidenced by the fact that employee Clark was called in to perform same. We cannot construe the above quoted communication as granting to any employee

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holding the status of employe Clark the right to perform extra or any other type of work in cases where other employes are available. It is unquestioned that either or both of the said claimants were available. The fact that such work would have had to be paid for at the punitive rate does not, in and of itself, constitute an emergency as such.

While this claim is meritorious, a preponderant number of awards of the Third Division of the N.R.A.B. hold that the proper penalty for work not performed is the pro rata and not the punitive rate. This claim is valid to the extent of eight hours at the pro rata rate.

FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

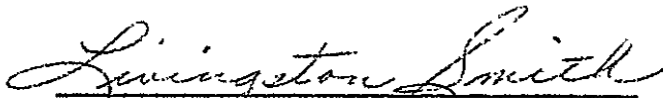
That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and

That the Carrier violated the effective agreement.


AWARD

Claim sustained for four hours to each of named claimants at the pro rata rate.

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Livingston Smith -- Chairman

  
W. I. Christopher -- Employee Member

  
G. W. Johnson -- Carrier Member

St. Louis, Missouri  
October 16, 1957