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Award No. 25
Docket No. 25

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:

1. Carrier violated the Agreement in Office of Auditor Station Accounts, General Office, St. Louis, when, on Saturday, August 18, 1956, it utilized W. L. Root, seniority date May 16, 1955, to work eight hours authorized overtime, on an "unassigned day," in lieu of utilizing Robert Haley, senior clerical employee entitled to the work, with seniority date of March 11, 1948, in violation of Rule 25(b) of the Clerks' Agreement;
2. The Carrier shall pay Clerk Haley for wage loss sustained, i.e., a day's pay, amount \$20.01.

FINDINGS: Claimant here alleges that he should have been assigned to perform authorized overtime delegated to a position designated as No. 59, the regular occupant of which was absent account illness. The work was performed on Saturday, August 18, 1956, which was an unassigned day of position No. 59. It was likewise an unassigned day of the position regularly occupied by the claimant, as well as the position regularly occupied by employee Root, who was, claimant alleges, improperly assigned to perform the overtime work in question.

It is evident that neither employee Root nor the claimant was the "incumbent" of the position or the work performed and for which overtime was authorized on the date in question. It is also unquestioned that both employee Root and the claimant here were qualified and capable of performing this work.

On the basis of the record as a whole in this particular case, the Board is of the opinion, and so finds and holds, that within the meaning of the fifth paragraph of Rule 25(b) the absence (as here) of the "incumbent" of the work entitled the claimant as the senior qualified employee the right of refusal to perform said work.

It is noted that this claim is 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 claim is sustained only at the pro rata rate.

AWARD: Claim sustained at the pro rata rate of position No. 59.

St. Louis, Mo.
September 20, 1957

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