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Award No. 28
Docket No. 28

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 the Office of Auditor Freight Traffic, General Office, St. Louis, Missouri, when, on Saturday, September 15, 1956, it utilized

H. W. Hamilton	seniority date	February 6, 1926
M. F. Nieman	seniority date	April 14, 1927
J. R. Pressgrove	seniority date	July 20, 1927
A. D. Swinney	seniority date	Sept. 9, 1941
H. S. Wren	seniority date	April 21, 1942
Connie DuPree	seniority date	July 22, 1942

to work eight hours authorized overtime, on an "unassigned day" instead of utilizing

Julius Kasselmann	seniority date	October 1, 1919
A. J. Wigge	seniority date	April 8, 1918
V. M. Johnson	seniority date	July 16, 1918
E. F. Farr	seniority date	October 20, 1918
H. R. Nommensen	seniority date	September 25, 1919
H. R. Schulz	seniority date	April 1, 1914

senior clerical employees entitled to the work, in violation of Rule 25(b) of the Clerks' Agreement;

2. The Carrier shall pay Clerks Kasselmann, Wigge, Johnson, Farr, Nommensen and Schulz for wage loss sustained, i.e., a day's pay each in the amount of \$25.71.

FINDINGS: The confronting claims concern request of six named claimants for one day's pay account failure of respondent to properly allocate authorized overtime on the enumerated "unassigned days."

The confronting disputes arise out of the consolidation of certain Carrier properties and the transfer of certain work and employees from Texas to St. Louis, Missouri.

To achieve the end sought, the parties entered into a Memorandum of Agreement bearing date of March 23, 1956, such Agreement containing a paragraph designated as Article V. It is the opinion of the Board that Article V of the Agreement was promulgated for the purpose of eliminating monetary claims or reparations arising therefrom account of discontinuance, merger, consolidation, or transfer, in connection with, or by reason of the consolidation of departments occasioned by this reorganization.

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It is the opinion of the Board, and it so finds, that on the basis of the facts in this particular case, it is reasonable to conclude that the work performed by those employes transferred from Texas did not become subject to the first sentence of Article V of the aforesaid Memorandum of Agreement bearing date of March 23, 1956. For the reasons stated, these claims are meritorious.

AWARD: Claims sustained.

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/s/ Livingston Smith
Livingston Smith - Chairman

/s/ Ira F. Thomas
I. F. Thomas - Employee Member

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
September 20, 1957

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Interpretation of Award No. 28
Docket No. 28

SPECIAL BOARD OF ADJUSTMENT NO. 166

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

Pursuant to the jointly executed request by the duly authorized representatives of the parties hereto, the Chairman of the Board enters the following interpretation of Award No. 28.

The parties have expressed uncertainty as to the intent of the Board when it entered its Award to the extent of "claims sustained."

It is apparent that this request for interpretation is occasioned by the fact that the Award did not specifically specify as to whether or not the claims sustained were to be paid at the pro rata or punitive rate. We are fully cognizant of, and herewith reiterate, our adherence to that line of awards of the Third Division of the National Railroad Adjustment Board, wherein it has been held that the proper penalty rate for time not worked is the pro rata rate. No work was performed here, so, therefore, the proper rate to be paid in this particular instance is the pro rata rate.

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/s/ Livingston Smith
Livingston Smith - Chairman

I dissent:

/s/ Ira F. Thomas
I. F. Thomas - Employee Member

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

January 3, 1958