

12-21-58



C O P Y

Award No. 1
Docket No. CL-6018

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
EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

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

1. When it refused and continued to refuse to compensate Clerk S. E. Donnell for the holiday, Thursday, November 24, 1955, at the rate of the position of General Clerk at Independence, Missouri, rate \$14.06 per day, which he was occupying by virtue of his seniority rights and Agreement provisions, and instead compensated Clerk Donnell for the holiday at the rate of \$12.20, which rate attached to the position of Night Baggage man at Sedalia, that Donnell had left to go to Independence to fill the vacation vacancy there upon General Clerk position, Monday, November 7, 1955, through Friday, November 25, 1955;
2. The Carrier shall be required to compensate Clerk Donnell in the amount of difference in the rate of Night Baggage man, Sedalia, and that of General Clerk, Independence, Missouri, \$1.86, to which he was justly entitled as the occupant, under the provisions of Rule 9(a) of the Clerks' Agreement, and Article II, Section 1, of the Chicago Agreement of August 21, 1954.

OPINION OF BOARD:

There are enough facts reported in the above statement of claim for deciding a dispute over the meaning of language in Article II, Section 1 in the August 21, 1954 Agreement, which specifies that holiday pay will be "at the pro rata hourly rate of the position to which assigned."

In declining the claim on the property Carrier's officers held, and now maintain, that the wage rate of Claimant's assigned position should determine his compensation for a holiday not worked while he was protecting on a temporary vacancy in the exercise of a seniority choice.

For support, Carrier relies mainly on the doctrine that one who is regularly assigned does not actually give up his regular assignment to work a temporary vacancy, and, since he was not on regular assignment as General Clerk, Claimant was not entitled to the wage rate for that position to compensate for the holiday Thursday, November 24, 1955. The contention has some considerable merit when due consideration is given to the practiced exercise of seniority and long acceptance by mutual understandings which, traditionally and historically, have attached in the past to the words "assignments" and "positions" for purposes of administering the affairs of the parties in keeping with local Agreements.

In some areas of dispute, the Organization likely would not take exception to Carrier's views, but does find them unacceptable here. Since Claimant was the employe "attaching" to the General Clerk's position during the period he worked it, and since the paid holiday fell within that period, the Organization contends he is entitled to be paid the rate for the position to which the holiday benefits attach.

Although the Organization's position is not consistent with the proposition that the regularly assigned General Clerk frequently is looked upon as "owning" the position during his temporary absence, it does remain a fact that, while the General Clerk is away, Claimant, in many respects, is his alter ego for pay and other purposes, such as assigned rest days, which, incidentally, determine what shall be the workdays of the workweek for the employe who is protecting on the vacancy. Another important consideration is that a regularly assigned employe who moves or is moved to another's assigned position to protect on a

temporary vacancy, as provided in Rule 9(a), is limited in his exercise of a free choice to return to his regular position, thus causing us to conclude that in some measure, he is assigned to the temporary vacancy.

Thanksgiving Day, 1955, was a workday of the established workweek for the General Clerk's position being worked by Claimant at the time. The daily rate for the holiday that fell on the workday of the established workweek was \$14.06. Except for the holiday intervening Claimant stood for an additional day's service as General Clerk during that workweek, for which he would have been paid the established rate. Therefore, and by reason of losing the day's work, Claimant's potential loss for that workweek was \$14.06 and not \$12.20 the rate for the Baggage-man's position to which Claimant was regularly assigned. His normal take-home pay, for the established workweek of the position to which assigned for the likely duration of the vacancy, thus would have been reduced by \$14.06, except for the paid holiday. The purpose of holiday pay is one for making the employee whole for loss of earnings in weeks during which a holiday occurs, and this has not been accomplished by paying Claimant the rate for a position which he was not working on the recognized and paid holiday.

FINDINGS:

The Board, after oral hearing, and upon the 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 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 been violated.

A W A R D

Claim sustained 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