

Award No. 17
Docket CL-6310-1

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, on May 13, 1958, Clerk C. M. Brown, Clerk-Sealer-Baggage-man, Durand, Kansas, was instructed verbally by Assistant Trainmaster, Mr. H. H. Gudger, to move from his regular assignment as Clerk-Sealer-Baggage-man, hours 6 PM to 3 AM, meal period 10 PM to 11 PM, rate \$16.88, rest days, Sunday and Monday, to the position of Chief Yard Clerk, hours 3:59 PM to 11:59 PM, rate \$17.54, rest days, Saturday and Sunday, and notice to claimant, copy to Division Chairman, was not given in writing as required by Rule 9(c) of the Clerks' Agreement;

2. The Carrier shall be required to compensate Clerk C. M. Brown as follows:

Tuesday,	May 13, 1958	2 ⁰¹ ''	@	\$1.09625	per hour,	amount \$ 2.21
Wednesday,	May 14, 1958	2 ⁰¹ ''	@	\$1.09625	per hour,	amount \$ 2.21
Friday,	May 16, 1958	2 ⁰¹ ''	@	\$1.09625	per hour,	amount \$ 2.21
Saturday,	May 17, 1958	8'	@	\$2.11	per hour,	amount \$16.88
Monday,	May 19, 1958	2 ⁰¹ ''	@	\$1.09625	per hour,	amount \$ 2.21
Tuesday,	May 20, 1958	2 ⁰¹ ''	@	\$1.09625	per hour,	amount \$ 2.21
						<u>\$27.93</u>

account violation of Rules 9 and 25 of the Clerks' Agreement.

OPINION OF BOARD:

On the claimed dates here involved Clerk C. M. Brown, seniority date September 10, 1945, Station and Yards, Central Division, was regularly assigned to the seven day per week position of Clerk-Sealer-Baggage-man at Durand, Kansas, 6 PM to 10 PM; 11 PM to 3 AM, rate \$16.88, Tuesday through Saturday, rest days Sunday and Monday, and he was relieved on his assigned rest days by a Relief Clerk.

Clerk F. A. Harrod, seniority date November 11, 1918, was regularly assigned occupant of position of "Chief Yard Clerk," Durand, Kansas, six day position, rate \$17.54, hours 3:59 PM to 11:59 PM, Monday through Friday, and he was relieved on Saturday by a Relief Clerk, Sunday being an unassigned day for this position to work.

Clerk Harrod was entitled to fifteen days vacation under Agreement provisions and was due on the vacation schedule to take his vacation for fifteen days beginning Monday, May 12, 1958 to run through Friday, May 30, 1958.

The record indicates that Clerk Brown was verbally directed by Assistant Trainmaster, Mr. H. H. Gudger on May 13 to work the Chief Yard Clerk position, assigned hours 3:59 PM to 11:59 PM. The move was effective May 13, without written notice to Brown, copy to Division Chairman.

Rule 9(c) of the Agreement provides as follows:

"Whether the employe is moved from his regular position by direction of the Carrier or of his own volition, such arrangement for the move will be made a matter of record in order to avoid any disputes about verbal understandings, copy to Division Chairman."

On May 21, 1958, the Superintendent addressed a letter to claimant which is in words and figures as follows:

"Wichita, Kansas, May 21, 1958
A-830-2

Mr. Clarence M. Brown
Durand, Kansas

This will confirm understanding reached between you and Asst. Trainmaster H. H. Gudger, concerning your protecting position of Chief Yard Clerk, Durand, Kansas, effective May 13, 1958, account vacation vacancy.

This move was made under provisions of Rule 9(b) of the Clerks' Agreement due to no qualified extra or furloughed clerk available.

cc HHG FRJ

H. B. DAVIS/S/

By reason of the Carrier's failure to make the move in question "a matter of record" at the time, or prior to putting same into effect, the Employees have concluded that the Carrier's right to make said move under the provisions of Rule 9(b) was "negated" by reason of an alleged violation of Rule 9(c) and that the claim as stated should be sustained in accordance with the terms of Rule 25(e) which provides:

"Employees notified or called to perform work not continuous with, before, or after the regular work period, or on rest days and specified holidays, shall be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

Since, from the Employees' point of view, the attempt to move claimant from his assigned position to perform work on another position for the duration of a temporary vacancy was ineffectual by reason of failure to comply with the Employees' version of Rule 9(c), the contention is made that claimant is entitled to recover the difference between the pro rata rate which he was allowed for the Chief Yard Clerk position, and the punitive rate to which he believes himself entitled for working outside his assigned hours on May 13, 14, 16, 19 and 20, and, in addition, he claims eight hours at the pro rata rate of the Clerk-Sealer-Baggage-man position for Saturday, May 17, 1958, account not permitted to work his own position on that date, which was a work day on that position but a rest day on the Chief Yard Clerk position.

In declining the claim, Carrier took the position that Rule 9(c) contained no penalty clause; that claimant earned more as a result of working this assignment for the fourteen days out of the month on the Chief Clerk's assignment at Durand, than he would have earned on his own position, and, therefore, claim should not have been made.

Carrier further contends that the record of this move was made in full compliance with Rule 9(c). In support, Carrier relies on the letter dated May 21, 1958, quoted above, a copy of which was furnished the Division Chairman. In that connection, it is Carrier's position that Rule 9(c) does not specify when the record must be made and since in this case it was made while the incumbent of the Chief Clerk position was still absent on vacation and ten days before his return, the requirements of the rule have been fully met in accordance with its stated purpose to avoid disputes about verbal understandings.

With respect to the claim for May 17, Carrier feels that the loss of that day by claimant by reason of it being a rest day of the Chief Clerk position was offset by the fact that claimant had a day of work on May 19 which would have been a rest day on his own position. In any event, Carrier feels it would be an injustice to impose a penalty for "technical violations of rules" in the absence of any penalty provision being stated in the rule.

The Board holds that the move in question was not arranged for as contemplated by Rule 9(c), and, therefore, claimant was under no duty to give up the hours and rest days of his regular assignment to relieve on another position at the pro rata rate, without some penalty attaching. The expression "arrangement for the move" carries with it the clearly implied intent that one will not be divorced temporarily from his regular position by being moved to another position until he has been thus temporarily assigned as a "matter of record." One does not ordinarily arrange for something to be done after it already has been done, and we think the parties had in mind a written record of the move before or at the time, with notice to the Division Chairman, in order that there might be prompt redress for any disputed moves that were found to have been made in error.

Accordingly, the claim will be sustained.

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

That the Agreement by and between the parties to this dispute has been violated.

AWARD

Claim sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 239

/s/ A. Langley Coffey
A. Langley Coffey, Chairman

/s/ G. W. Johnson
Employer Member

/s/ Frank D. Lupton
Employees' Member

Dated at St. Louis, Missouri, this 21st day of July, 1959.