

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 System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement at Kansas City, Missouri, when on Monday, July 22, 1957; Tuesday, July 23, 1957 and Wednesday, July 24, 1957, it held Clerk Robert C. Layman off of his regular assignment of Interchange Relief Clerk, rate \$16.62 per day, hours 7 AM to 3 PM, at Topping Avenue Yard, July 22 and 23, and 3 PM to 11 PM at West End Yard on July 24, and on those three days he was required to work the position of Power Clerk at Topping Avenue, rate \$18.24 per day, hours 3 PM to 11 PM, in violation of Rule 9(b) and Rule 25 of the Clerks' Agreement.

2. Clerk Robert C. Layman shall be compensated as follows:

July 22, 1957 Eight hours at his regular rate account held off of
his regular assignment \$16.62

Difference between \$18.24 pro rata rate of Power
Clerk allowed, and punitive rate of \$27.36 to which
he was entitled, account required to work outside
his assigned hours \$ 9.12

July 23, 1957 Same as above - \$16.62 plus \$9.12 \$25.74

July 24, 1957 Eight hours at rate of his own assignment which he
was held off of and required to work at an entirely
different location \$16.62
\$68.10

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

OPINION OF BOARD:

Robert C. Layman, seniority dates of March 26, 1951, Class "A" and March 8, 1951, Class "B" on the Kansas City Terminal Station and Yards consolidated "A" and "B" seniority roster was, on the claimed dates, July 22, 23 and 24, 1957, the regularly assigned occupant of position of Relief Interchange Clerk, rate \$16.62 per day, and his assigned hours and location of work on each of three claimed dates were as follows:

Topping Avenue Yard, Monday, July 22, 1957 -
Relief Interchange Clerk, rate \$16.62, 7 AM to 3 PM,

Topping Avenue Yard, Tuesday, July 23, 1957 -
Relief Interchange Clerk, rate \$16.62, 7 AM to 3 PM,

West End Yard, Wednesday, July 24, 1957 -
Relief Interchange Clerk, rate \$16.62, 3 PM to 11 PM.

Topping Avenue Yard Office is located in Kansas City Terminal at a point commonly referred to as "East Bottoms - Topping Avenue," about two miles east of West End Yard Office, which, in turn, is located at a point on Nicholson Avenue at Monroe Street.

On July 22, 1957, claimant, by proper notice, was instructed as follows:

"You arrange to work the second trick Power Clerk 3P to 11P three days-
July 22, 23 and 24.

"You are being moved under the provisions of Rule 9B."

Claimant complied with the instructions as given. On two of the days in question he worked the second shift Power Clerk position starting to work at 3 PM which for those two days, was the normal quitting time on his regular position. On the third day he worked his regular hours, but at a different location than the one for his assignment. He claims he was mishandled under the terms of Rule 9(b) which is relied upon by Carrier as authority for the questioned move.

Rule 9(b) provides as follows:

"When a temporary vacancy is not filled under the provisions of Section (a) of this rule and such vacancy cannot be filled by qualified available extra or furloughed employee, the Carrier may move an assigned employee from his regular position. If necessary to move a regular assigned employee, first selection will be made from the junior qualified employees working in the same location or office whose hours are substantially the same and whose rest days are the same, and such junior employee will be required to protect the work. He will be returned to his regular position as soon as a qualified extra or furloughed employee becomes available. This will not be considered as suspension from work under Section (f) of Rule 25.

"The assigned rest day of the employee moved will follow such employee on the temporary vacancy, and if required to work his regular assigned rest day, or days, he shall be paid therefor at the rate of time and one-half, but if required to work the rest day, or days, of the position temporarily filled, and it is other than his regular assigned rest day, or days, he will be paid therefor at the pro rata rate because he is not working his own rest day, or days."

The Employees rely upon one sentence of the rule which provides:

"If necessary to move a regular assigned employe, first selection will be made from the junior qualified employes working in the same location or office whose hours are substantially the same and whose rest days are the same, and such junior employe will be required to protect the work."

Carrier sees some conflict between that sentence and the last full paragraph of the rule. Additionally, Carrier makes the point that the words relied upon by the Employees include the expression, "first selection", thereupon implying more than one possible choice. Carrier insists the rule empowers it to select an employe whose hours of assignment and rest days are not the same for work at a different location, if there is none among the junior qualified employes working in the same location or office with hours the same.

The language of the rule is clouded in ambiguity and its intent is obscure, but we see nothing herein to clearly point up a violation in dealing with the claim of a Relief Clerk who works odd hours and at different locations as a usual thing in connection with his regular assignment, and who, in the instant case, worked two days in the same location or office at hours the same as on another day of his regular assignment; and who, on the third day claimed, worked his usual hours in familiar but different surroundings for that day of his regular assignment.

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 was not violated.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 239

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

/s/ G. W. Johnson
Employer Member

/s/ Frank D. Lupton
Employee Member

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