

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway, that the Carrier violated the provisions of Rule 4-(a) of the Telegraphers' Agreement when, commencing July 9, 1944, and continuing daily through January 15, 1945, it assigned the agent-operator and the second trick operator at Patrick, South Carolina, to work eight hours in a spread of nine hours with one hour allowed for meals at this two-shift office; and that agent-operator and the second trick operator at this office shall each be paid for one hour overtime at time and one-half rate for each day, October 9, 1944, the date on which the Carrier was put on notice of the violation, through January 15, 1945, which they were thus required to work without pay.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1944, as to rules and working conditions is in effect between the parties to this dispute. The positions referred to at Patrick, South Carolina, are listed at page 29 of said agreement.

We quote the following letter which initiated this claim:

"Ellenboro, N. C., October 9, 1944.

"Mr. J. H. Bowen, Superintendent
Seaboard Air line Railway
Savannah, Ga.

"Dear Sir:

"My attention has been called to the following assignments:

"STATION	OPERATORS	WEEK DAYS	SUNDAYS
Patrick	Agent-Opr	8 15 AM-5 15 PM 1 hour for lunch	same
Patrick	Operator	8 30 PM-5 30 AM 1 hour for lunch	same
Blaney	Agent-Opr	8 30 AM-5 30 PM 1 hour for lunch	same
Blaney	Operator	7 15 PM-4 15 AM 1 hour for lunch	same

"Your attention is called to Rule 4-(a) providing that where two or more shifts are worked, eight (8) consecutive hours shall constitute a day's work.

allotted by their agreement. Without prejudice to our position as just stated, the claim should be declined on the basis that the agreement specifically provides that where only one operator is employed at a station it is permissible to assign an operator to 8 hours of service exclusive of the meal period. In consideration of the above facts and circumstances, the carrier respectfully requests that the claim be declined.

OPINION OF BOARD: Employees contend that the office at Patrick, South Carolina is a two-shift office and that from July 9, 1944, until January 15, 1945, Carrier assigned the Claimants to work eight hours in a spread of nine hours with one hour allowed for meals in violation of Rule 4 of the Agreement. Employees protested this assignment on October 9, 1944. On January 15, 1945, Carrier changed the assigned hours to comply with Employees' request.

Rule 28 of the Agreement provides:

"Time claims must be presented within thirty (30) days from the time cause for claim occurs.

"Employees will be notified by the management without delay, when claims for overtime or for compensation on any other account are not allowed."

In this dispute time claims were not presented to the Carrier until June 14, 1945, or five months after the last date the cause for the claims occurred. Rule 28 is clear and unambiguous, it says time claims **must** be presented within the fixed time. We are of the view that the word "must" as used in the rule contemplates that unless the time claims are presented within the prescribed time that it is too late thereafter to present such claims. The purpose of the rule, we believe to be the same as the purpose of a statute of limitation, that is, to prevent undue delay in presenting time claims and to suppress stale claims from being asserted.

However, Claimants contend that the letter of October 9, 1944, which is set forth in the record, "was sufficient notice to the Carrier that claims for one hour overtime under the terms of the Agreement would be in order unless the assignments were corrected." The fact that time claims might be made or "would be in order" is not sufficient. Rule 28 says time claims must be presented within the prescribed time. Concededly, time claims were not presented within the time prescribed by the rule and the bar of the rule became complete.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole 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 approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred by Rule 28.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.