

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20910
Docket Number CL-20689

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, **Freight** Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(CL-7515) that:

1. Carrier violated the Clerks' Rules Agreement, in particular, Rules 1, 24, 26 (a) and 48 (a), on March 25 and April 1, 1973, when it required and/or permitted train conductors at **Neodesha, Kansas**, who are ~~not~~ covered by the Clerks' Agreement, to copy and/or handle train orders on claimant's rest day (Carrier file 380-393).

2. Carrier shall ~~now~~ be required to ~~compensate~~ Mr. L. L. Seitz for a call pursuant to Rule 26 (a) of the **Agreement**, account being denied his contractual rights to perform the Telegrapher work here involved for March 25 and April 1, 1973.

OPINION OF BOARD: As we read this record the facts are not disputed and, indeed, that a violation occurred is admitted by Carrier. The only **justiciable** issue before us is the basis and **amount** of recoverable damages.

The record **shows** that the Claimant ~~was~~ the regularly assigned Star **Agent** - Telegrapher, Monday through Saturday 8:30 A.M. to 5:30 P.M., with **Sunday** rest day, at Neodesha, Kansas. On Sunday, **March 25, 1973**, and Sunday, April 1, 1973, rest days for Claimant, train conductors copied a train order from dispatcher at Neodesha. Claimant sought payment of 5 hours and 20 **minutes** at the punitive rate for each of these occurrences, citing Rule 26(a) of the March 1, 1973 **Agreement**. Carrier on the property offered repeatedly to settle the claim on the payment of a call, i.e., 3 hours at the pro rata rate under Rule 48 of the Agreement, for each occurrence. Thus, the sole issue presented for our consideration is whether **Rule 26(a)** or **Rule 48** should govern recovery in the instant case.

Petitioner relies on Rule 26(a) which governs payment for "services **rendered** by **employees** on their assigned rest day." The **error** of this position is basically that Claimant rendered no service on either claim date. As we read **Rule 26(a)** it clearly **contemplates** the actual performance or rendering of service by an **employee** on his assigned rest day. It is undisputed that Claimant's rest day ~~was~~ not interrupted and he was not required to render service on that day.

We are additionally persuaded by the fact that **Rule 48** is a special rule specifically and traditionally **utilitized** by the parties in situations **such as here presented and that said Rule was readopted and reaffirmed in the March 1, 1973 Agreement**. A similar **Rule** was construed by Special **Board** of Adjustment No. 305, Award No, **39**, involving these parties in a manner supportive of **Carrier's** position herein.

We shall sustain the claim that **Rule 48(a)** of the Agreement was violated on March 25 and **April 1, 1973 and**, accordingly, Claimant should be compensated at the call rate of three hours pro rata for each occurrence.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Parker*
Executive Secretary

Dated at Chicago, **Illinois**, this 16th day of January 1976.