Award No. 4191
Docket No. TE-4177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad Company, that:

(1) The Carrier violated Memorandum of Agreement No. 1, signed at Chicago, Illinois, March 13, 1946, when positions occupied by employes V. S. Sailor, B. J. Block, E. V. Helms, J. H. Scott, R. V. Cowling, D. E. Walser, E. W. Clensy, Scott Hasselton, E. M. Caudle, B. B. Chapman, Taylor Swindle, and O. D. Campbell, or occupied by extra employes being used to relieve the above named individuals on the positions referred to, were blanked on a day other than Sunday and the employes herein referred to required to work full eight (8) hours on Sundays and were paid at the pro rata rate.

(2) That all employes referred to in Item (1) shall be compensated at the rate of time and one-half with a minimum of eight (8) hours for each day that the position occupied by the employe was improperly blanked on a day other than Sunday beginning March 13, 1946, the effective date of the Memorandum Agreement No. 1, and continuing until the Carrier, at the insistence of the Organization applied the Memorandum correctly.

EMPLOYES' STATEMENT OF FACTS: A memorandum of Agreement on the subject of establishing a day of rest, setting up relief assignments for positions having the Sunday assignment of week day hours, providing certain guarantees and defining procedure and other related features was signed by the Carrier and the Organization March 13, 1946. (Ex. 1)

During November, 1946, the attention of the Local Chairman of the Organization was directed to the application being made of the memorandum by the Carrier which resulted in the blanking on one week day each week of positions occupied by the employes cited in Item 1 of the Statement of Claim. Claim was filed by the Organization's representative at a conference held on November 29, 1946.

After additional handling, the Carrier conceded the erroneous application of the memorandum, paid claims filed, beginning thirty days prior to November 29, 1946, but refused payment of claim for the period, beginning March 13, 1946 and ending thirty days prior to November 29, 1946.

POSITION OF EMPLOYES: There is an agreement in effect between the parties to the dispute effective June 1, 1939, amended as to certain rules applicable to this dispute by Memorandum Agreement No. 1 signed at Chicago, Illinois, March 13, 1946, a copy of which is attached hereto as Exhibit A.

"(a) Regular assigned employes shall receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight (8) hours as per location, except on assigned rest days and holidays on positions covered by Article 9 or on Sundays and holidays on other positions.

(b) This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

The language of the rule is unambiguous and stipulates that if an employe is able and willing to work and is not called therefor under the provisions of the rule, he is entitled to receive one day's pay within each twenty-four hours, **except "on . . . other positions."** The case in question was a position that was required to work six days a week including Sunday, and the services thereon were not needed on the seventh day. Rule 21 of the agreement states:

"When a position is regularly required to work more than three (3) hours on Sundays and the specified holidays within the hours of the regular week day assignment, or two (2) or more tours of duty within the hours of the regular week day assignment, the position shall be considered in the same category as a full-time seven-day position and shall be subject to the provisions of Article 9."

This rule states that positions required to work three hours or more on Sundays or holidays within the hours of the regular week-day assignment, or two or more separate tours of duty within the same hours, shall be considered in the same category as a "full-time seven-day position." A full-time seven-day position is one that it is necessary to work every day in the week. The position in question is not such a position. The carrier submits that when positions of this nature are worked comprising six days including Sunday, that the proper rate for Sunday should be time and one-half. The employes in question worked six days per week inclusive of Sunday. If the employes having six-day assignments are required to and do work on their rest or relief day, they are paid time and one-half for such work on that day. The employes in question did not work on their rest or relief day and were paid eight hours at the pro rata rate for each day they worked, whereas they should have been allowed time and one-half for work they performed on Sunday with no allowance for their assigned rest day, this being the only penalty provided in the agreement for work performed on Sunday when the position is not a full-time seven-day position.

The Carrier contends it has conclusively established that:

1. The provisions of Rule 46 of the agreement bar claims prior to date presented.
2. The penalties stated above are the only ones stipulated in the agreement.
3. There is no merit to the claim and it should be denied.

OPINION OF BOARD: On March 13, 1946, the Carrier and the Organization signed Memorandum Agreement No. 1 which was amendatory of the Agreement of June 1, 1939. On November 29, 1946, the Organization made complaint and filed claim on the ground that the Memorandum Agreement had been improperly applied and resulted in the blanking on one week day each week of positions occupied by the employes in whose behalf the claim was brought. The Carrier wrote the Local Chairman, in part, as follows:

"It is conceded where operators are given a day of rest on week days and worked their full assignment on Sundays, that under the agreement we could not relieve them on week days, (other than holidays), except through use of relief operators, and claims accordingly are valid 30 days from time complaint or claim was made, which as stated in your letter was November 29th, 1946. Rule 46 of the Telegraphers' Agreement conclusively covers this feature."

The Carrier thereupon declined to make any settlement on any violations occurring more than 30 days prior to November 29, 1946. The Carrier contends that this is in accord with Rule 46 (a) of the Agreement effective June 1, 1939, which says:

> "Any claim or grievance that may arise shall be presented by the employe aggrieved or by his representative to the employing officer within thirty (30) days of its occurrence."

The foregoing operates as a cut-off rule and any claim made is limited to the thirty days immediately preceding the filing of the claim and to continuing violations subsequent thereto. Awards 4190, 4057, 3605, 2224, 2204, 1222.

The Organization urges that Rule 46 (a) should not be applied in the present case because of the failure of the Carrier to comply with Article 25, Rule 57, current Agreement, which states:

> "The railroad will furnish each employe a copy of this schedule and all amendments and supplements thereto within a reasonable time."

While there is evidence in the record that copies of Memorandum Agreement No. 1 were furnished its operating officers and a supply was also furnished the General Chairman of the Organization, the question can be disposed of on other grounds. Compliance with the rule under consideration is not made a condition precedent to making the Memorandum Agreement effective. The Memorandum Agreement was negotiated and signed by the representatives of the employes. The Organization is fully cognizant of its terms and the employes within it will not be heard to say that they did not know the contents or that they are not bound thereby. The rule simply means that copies of all rules and amendments will be furnished within a reasonable time at the expense of the Carrier. The Agreement became effective immediately in accordance with its terms.

The Organization also contends that the claim is a continuing one and that as such, Rule 46 (a) does not apply. The claim is not a continuing one in the sense in which that term is ordinarily used. Each day that the Carrier blanked a claimant's position was a violation of the Agreement for which claim could be made. The rule as to continuing claims has no application to a series of separate violations which extend over a period of time.

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 employes involved in this dispute are respectively carrier and employes 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 to the extent shown by the Opinion.

AWARD

Claim (1) sustained. Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.