Award No. 6789
Docket No. TE-6771

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(1) The Carrier acted contrary to the provisions of Article 36 (b) of the Agreement when it failed to allow the claim of F. E. Bartelt who was suspended from work during regularly assigned hours on the following dates: June 3, 4, 10, 11, 17, 18, 24, 25; July 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, 1952; and

(2) The Carrier shall now be required to pay the claim of F. E. Bartelt as presented, in full.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of June 15, 1944, as amended September 1, 1949, is in effect between the parties; hereinafter referred to as the Telegraphers' Agreement.

During the dates involved in this claim Mr. F. E. Bartelt was regularly assigned to the position designated as Rest Day Relief Cycle No. 20, with assigned rest days of Saturday and Sunday.

Effective June 5, 1952, claimant Bartelt was ordered to fill the third shift position 10:00 P. M. to 6:00 A. M. at "JU" Interlocking Tower, Bethlehem Junction, Pennsylvania. He worked this position, as ordered by the Carrier, from June 5, until July 30, 1952, inclusive, and was forced to take the assigned rest days of this position which were Tuesday and Wednesday.

The Organization claimed that claimant Bartelt was being improperly required to work the rest days of his regularly assigned Relief Cycle position (Saturday and Sunday) each week he was assigned at "JU" and that he was also being suspended from work each Tuesday and Wednesday (the rest days he was forced to take at "JU") during the period of this claim.

On August 18, 1952, formal notice was served on the Carrier by the Organization on behalf of claimant F. E. Bartelt, for payment under the provisions of Article 22, for being used off his regular position and since claimant was required to assume different rest days on this other position he should be paid time and one-half for working the rest days of his regular position. Furthermore, he should be paid eight hours at the straight time rate for the days that he was suspended from work which were the assigned rest days he was forced to take on the position at "JU".

is in the nature of a pyramided penalty which this Board has, in numerous cases, ruled against, even where, in the opinion of the Board, the particular action complained of was in violation of the agreement which was there involved. The latter portion of this claim was, therefore, not paid. See in this connection Awards 5652 and 4151 of this Division.

The claim presented to this Board raises the issue only of whether a claim which has not been denied under the terms of Article 36, the time limit on claims rule, has to be paid in its entirety whether or not the claim is made for $1.00 or for $1,000,000, or whether or not the claim as made has any relationship to the rule or rules alleged to be violated. It is, therefore, not necessary to go into the question of whether there was actually any violation of a rule or whether any rule would require additional compensation.

Carrier contends therefore, that the remaining portion of this claim should be denied on the ground that it is an unconscionable claim of the nature which this Board has found to be unwarranted even where there may be a rule violation.

The Carrier affirmatively states all data contained herein has been presented to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was regularly assigned to a position, the rest days of which were Saturdays and Sundays. However, from June 5 to 30, 1952, he was required to work another position, with assigned rest days of Tuesdays and Wednesdays. On August 18, 1952, a claim was asserted asking that the Claimant be paid at time and one-half for the Saturdays and Sundays that he was required to work and at pro rata for being suspended from his regular position on Tuesdays and Wednesdays during said period, plus appropriate travel time and expense allowances. Rules 21 (m), 22 and 25 (d) of the Agreement were cited in support of the Claim. The Carrier's Superintendent acknowledged receipt of the Claim on September 8.

Article 36 (b) of the Agreement provides that:

> "The Employe or his Representative will be notified in writing within thirty days from the date the claim is presented if claim is not allowed. If not so notified, claim will be allowed."

The Carrier did not so notify the Employe or his Representative of its decision within thirty days, but says that, notwithstanding, it should only be required to pay Claimant at the punitive rate for services performed on the rest days of his regularly assigned position. The Employes urge that the failure of the Carrier to act on the Claim within the time required by the Rule above obligated it to allow the Claim as filed.

In Award 4529 this Board said with respect to the application of a rule similar to 36 (b):

> "Nor does the provision of the Rule contemplate, when it is applicable, that the merits of the claim shall be considered."

The situation before us bears a striking similarity to that which results when a defendant defaults in an action at law. In such a proceeding a subsequent hearing to assess the amount of recovery is not required, in the absence of a statute to the contrary, where the action is for a liquidated sum or the demand is ascertainable by computation from facts of record. The record before us contains the data necessary for computing what the Claimant is entitled to receive and this is sufficient protection against a claim of this character being used as a vehicle for extorting an inconscionable exaction.

We are not required to express any opinion as to what would have been considered the merits of the Claim if the Carrier had expeditiously handled it on the property.

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

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of October, 1954.