

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20910
Docket Number CL-20689

Dana E. Eischen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-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 utilized 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. Pauls
Executive Secretary

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