

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuelli, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE.—"Claim of E. A. Nooker for emergency expense at Farthing, Wyoming, August 8 to 17, inclusive, and August 19 and 20, 1934, and for dead-head travel time returning from Farthing, Wyoming, to Ft. Collins, Colorado."

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

The carrier and the employee involved in this dispute are, respectively, carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. Hearing was had and because of the failure of the Third Division to agree upon an Award, and because of a deadlock, Paul Samuelli was selected as the Referee to sit with the Division as a member thereof and make an Award.

"E. A. Nooker is an extra telegrapher on the Northern Division. On August 7, 1934, he received a message to go to Horse Creek, Wyoming, to work account washout. While en route these instructions were changed later in the day, and he was ordered to go to Farthing and to open an office there, and directed to work the first trick as telegrapher 8 A. M. to 4 P. M., which he did.

"Telegraph service was established at Farthing on August 8, 1934, and continued until August 20, 1934, when telegraph office was closed and instruments were removed, and train order board taken down.

"Nooker was paid deadhead travel time going to Farthing from Ft. Collins, his home station.

"When the service at Farthing was discontinued on August 20, 1934, Nooker deadheaded to Ft. Collins, his home station, and made claim under paragraphs (a) and (b) of Rule 19 for pay for actual travel time consumed in deadheading for the return movement, including expenses of \$2.25 per day covering the period used in such service at Farthing, and while away from home station.

"The claim for deadhead movement back to home station, Ft. Collins from Farthing, with expenses of \$2.25 per day while away from home station was declined.

"Rule 19 of the Telegraphers' Schedule Agreement reads as follows:

"(a) Regularly assigned employees taken from their assigned positions to be used at derailments, washouts, or similar emergencies will receive the salary of their position. Extra employees when used in similar services shall receive not less than the minimum rate of telegraphers. While away from home station in such service telegraphers will be allowed \$2.25 per day for three meals and lodging—50 cents per meal, 75 cents for lodging.

"(b) Regularly assigned employees called for such service will be paid from the time ordered to leave home station until return for all time worked in accordance with the practice at the home station and straight-time rate for all time waiting or traveling. Extra employees will be paid from the time ordered to leave home station until return and will receive overtime rates for all time worked in excess of eight hours and straight time for all time waiting or traveling.

"(c) Extra men will receive the same rate of pay as the men they relieve.

“(d) Extra telegraphers who have performed initial service transferred to another position by proper authority will be paid pro rata for actual time consumed in deadheading.”

Farthing is located about three and one-half miles south of the south end of the washout territory. At one time it was a regular telegraph office. Three years previous to the time in question the office had been discontinued, but was reopened for a few days to temporarily facilitate the emergency work in the washout territory.

Carrier contends that the Rules above quoted do not apply to the claim of the employee for the reason (1) that the employee was not used *at* the washout, and (2) the deadhead travel time in returning from Farthing to Ft. Collins is not covered.

We cannot agree with either of these contentions. While it is true that the Farthing station was not actually within the boundaries of the washout territory, yet it was for all practical and reasonable purposes at the washout. The construction or interpretation placed on the language of Rule 19 by the carrier is too strict. In Docket TE-70 this Division announced its interpretation of the Rule on this Railroad as to deadhead travel time, and we are of the opinion that the same interpretation of that Rule should apply in this case.

AWARD

Claim of employee Nooker is allowed.

By order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 3rd day of September 1935.