

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers Southern Pacific Company (Pacific Lines), that Extra Telegrapher R. O. Beaumont be paid 7 hours 15 minutes under Rule 8 of the Telegraphers Schedule agreement, for time consumed in deadheading El Centro to Los Angeles, Calif., January 5th, 1934."

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.

The case being deadlocked, Willard E. Hotchkiss was appointed as Referee and on request of the carrier a second hearing was held on July 1, 1936, at which the parties argued the case before the division with the Referee sitting as a member thereof.

An agreement bearing date of September 1, 1927, as to rules, and May 1, 1927, as to rates of pay, is in effect between the parties.

Rule 8 of the agreement is cited, and there is also cited a memorandum of agreement bearing date of November 27, 1931, which agreement contains agreed interpretations of Rule 8 under various circumstances set forth. Rule 8 reads as follows:

"Rule 8. Extra telegraphers will be paid for time consumed for dead-heading and relief service, but shall not receive compensation for this service to exceed one day's pay of the telegrapher relieved for each 24 hours or fraction thereof en route to and from the assignment. This will not apply to extra telegraphers deadheading to assert seniority rights over other extra telegraphers.

"NOTE.—Means that extra telegraphers will be paid actual time for dead-heading, with maximum allowance of one (1) day's pay in each twenty-four (24) hour period, at rate of position relieved.

"Example.—Extra telegrapher, deadheading 'A' to 'B' consuming three (3) hours; rate of pay at 'B' .7000 cents per hour; amount \$2.10; then, if the extra telegrapher performs eight (8) hours' service on day dead-heading, he will receive eight (8) hours' pay in addition to the deadhead allowance."

Sections 1 and 2 state the purpose of the memorandum of agreement of November 27, 1931, and set forth the headquarters for the several divisions of the Southern Pacific Company. Sections 3, 4, and 5, which are the pertinent sections of the memorandum, are as follows:

"MEMORANDUM OF UNDERSTANDING

"(3) Superintendent of each of the four divisions designated by name in Section 2 shall inform each extra telegrapher on such Superintendent's respective division which of the two stations named on that division will

be headquarters for such extra telegraphers. The number of extra telegraphers and the individuals for each headquarters may be changed whenever necessary to meet requirements.

"If the headquarters of an extra telegrapher is changed as provided in this Section, compensation for the first deadhead service for which ordered, from or to headquarters, subsequent to the change, shall be as follows:

"(a) If an extra telegrapher is employed on the line or is enroute under instructions, to deadhead, to the original headquarters at the time headquarters is changed, his deadhead allowance, if enroute, or his first deadhead allowance to headquarters, after headquarters has been changed, shall be computed to original headquarters as it existed before the change. Subsequent deadhead allowance to headquarters shall be computed as provided in Section 4.

"(b) The first deadhead for service an extra telegrapher is ordered to perform from headquarters subsequent to change of headquarters shall be computed from original headquarters as it existed before the change.

"Subsequent deadhead allowance from headquarters shall be computed as provided in Section 4.

"(c) Allowance for deadhead service, except as provided in paragraphs (a) and (b) of this Section, shall be computed as provided in Section 4.

"(4) An extra telegrapher ordered by proper authority to deadhead for service shall be paid for time consumed deadheading as prescribed in Rule #8 of current Telegraphers' Agreement, as follows:

"(a) When deadheading for service, on instructions from proper authority, shall receive deadhead allowance from headquarters to station ordered, except as hereinafter provided.

"(b) At conclusion of service at a station, if not ordered elsewhere for service, shall be ordered to deadhead to headquarters and paid deadhead allowance from station last worked to headquarters, except as provided in paragraph (d) of this Section.

"(c) At conclusion of service at a station, if ordered to deadhead to another station for service, allowance for deadhead shall be from last station worked to station ordered, except, if service to be performed at the station to which ordered, will not commence on the next date following the beginning of the last day's service at the last station worked and if available passenger train service will permit the extra telegrapher to reach headquarters and then reach the station to which ordered in time to perform the service required, he will be paid deadhead allowance from the station last worked to headquarters, and from headquarters to the station ordered, provided he makes the trip to headquarters and thence to the station to which ordered.

"(d) If ordered to deadhead to headquarters, and, if before reaching headquarters, extra telegrapher requests and receives permission from proper authority to remain at some station other than headquarters, awaiting work, will not be paid deadhead allowance from station last worked to headquarters, but if subsequently ordered to deadhead to a station, for service, shall be paid deadhead allowance from headquarters to station ordered.

"(5) The provisions of this Memorandum of Understanding will not apply to extra telegraphers deadheading to assert seniority rights over other extra telegraphers."

As set forth in statement of claim, extra telegrapher Beaumont deadheaded Los Angeles to El Centro on December 18, 1933, to displace extra telegrapher Shearer. Beaumont was relieved at El Centro January 5, 1934, and deadheaded to Los Angeles, claiming 7 hours 15 minutes time for this deadhead trip.

OPINION OF THE REFEREE.—The language of Rule 8 and of the Memorandum of Agreed Interpretations dated November 27, 1931, is ambiguous as applied to this case. Decision must, therefore, be drawn from the context and from such reasonable and fair inferences as can be made therefrom.

In a recent case in which it would have been correct usage to have interpreted the phrase "before or after a holiday" to cover action taken before a holiday and the same action taken after a holiday, it was held that the action in question must be restricted to one occasion and that if taken before a holiday it could not also be taken after the same holiday. The reason for that decision was not found in the language of the agreement as much as it was in con-

sideration of what must have been in the minds of the parties and of what appeared fair and equitable in all the circumstances.

There are many cases in which the word "to" by almost inescapable inferences must be interpreted to mean "to and from." There are also circumstances in which language used in one place has to be considered in connection with language used in another place in the same instrument. Moreover, language of agreements is sometimes left ambiguous because the parties cannot agree to an interpretation but can agree to the ambiguous language and, therefore, take the risks involved in any later interpretations of such language.

In all cases an authority which is called upon to apply the language of an agreement to a specific case must study the language, the context, any circumstance which would throw light on the intent of the parties, and, if then the issue is still in doubt, the interpreting authority must exercise judgment as to what is fair and equitable.

Studying the context of the memorandum of November 27, 1931, leads to a strong inference that deadhead time is to be paid for only when the employee is traveling under orders. The equitable basis of the payment is that the orders of the carrier which obligate the employee to report at a point away from his base causes him to lose time which he would be working if the carrier had utilized his services at the base. Such an equitable basis for payment is lacking in the case of an employee who, of his own volition, finds it advantageous instead of waiting for an opportunity to displace a junior near at hand decides to travel away from his base to exercise his right of displacement. Exactly the same equitable considerations apply in respect to deadheading back to the base after temporary employment as result of displacing a junior employee.

Since, therefore, the rule is ambiguous, since the context of the Memorandum of Agreement implies that deadhead time is to be paid while traveling under orders in the circumstances outlined therein, and since there appears to be no injustice involved in omitting pay for deadhead time returning to base from a point to which an employee has elected to go to assert displacement rights, it is held that deadhead time for such return trip is not contemplated by the agreement.

AWARD

Claim disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H A JOHNSON
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1936.