

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Denver & Rio Grande Western Railroad that, the carrier shall furnish all employes covered by Telegraphers' Agreement regularly assigned to work at Bond, Colorado, and without cost to them, living quarters, in accordance with Rule 20-(c) of said Agreement; and that all rental the carrier has required such employes at Bond, Colorado, to pay in the past shall be refunded to them by the carrier."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing date January 1, 1928, as to rules and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

"On or about June 14, 1934, a continuously operated telegraph station was established at Bond, Colorado, thereby creating 1st, 2nd and 3rd trick telegraph positions, which positions were covered by Telegraphers' Agreement.

"Bond is a barren point created solely as a train crew terminal as a result of the completion of the Moffat Tunnel route of the Denver and Salt Lake Railroad over which certain Denver and Rio Grande Western trains in and out of Denver are diverted from the Royal Gorge Route. Bond is located about one-half mile west from the junction of the Denver and Rio Grande Western with the Denver and Salt Lake, and is situated in the Rocky Mountains at an elevation of 6,710 feet. Bond did not exist prior to the opening of the Moffat Tunnel Route, and does not support any population whatever except persons engaged in the operation of Denver and Rio Grande Western trains, and those employed by the railroad to feed and lodge such railroad employed persons. All buildings in Bond are owned by the Denver and Rio Grande Western Railroad, and are located on Company ground. It is an isolated point.

"Rule 20—Privileges—of Telegraphers' Agreement provides:

- '(A) At stations where household supplies cannot be procured, free freight rates will be granted employes on such supplies as provided in published tariffs.
- '(B) The rates of pay named herein include such privileges as free occupancy of certain assigned buildings located upon the Company's ground, together with fuel, light, ice and water used therein.

station buildings and for living quarters, the agent or agent-telegrapher at such points were granted the free occupancy of such quarters. The rule, however, was never intended to and has never been applied as a mandatory requirement of furnishing free living quarters to agents except where such quarters were available as a part of the station facilities.

"Rule 20 (c) first appears in the agreement effective April 1, 1919, and reads:

"The company will provide living quarters for employes at obscure points where same cannot be otherwise secured."

With revision of the agreement effective January 1, 1924, the rule was changed to its present language by substitution of the word 'isolated' for the word 'obscure.' This rule while it insures that the Company will provide living quarters at isolated points does not guarantee the free occupancy of such quarters.

"A careful analysis of Rule 20 (c) reading:

"The Company will provide living quarters for employes at isolated points where same cannot be otherwise secured."

will develop that the Carrier is obligated to provide living quarters for employes at isolated points only where same cannot be otherwise secured. However, as set out in Carrier's Exhibit 2, there were houses set aside for and available for rental to the telegraphers employed at Bond.

"The Carrier contends that Rule 20 was not violated, and further contends that the Organization in making the claim that this rule was violated in this case is placing an interpretation and enlargement on the rule that was never contemplated either in the making of the rule or the past application thereof."

OPINION OF BOARD: Inasmuch as the parties stated at the hearing on June 6, 1939, that the telegraph office at Bond was closed January 2, 1939, since which date no employes covered by the telegraphers' agreement had been employed at Bond, it is unnecessary, and the Division does not pass on the first part of the claim, reading:

"The carrier shall furnish all employes covered by Telegraphers' Agreement regularly assigned to work at Bond, Colorado, and without cost to them, living quarters, in accordance with Rule 20-(c) of said Agreement."

Referring to the second part of claim, reading:

"That all rental the carrier has required such employes at Bond, Colorado, to pay in the past shall be refunded to them by the Carrier."

The evidence shows house rental was collected from certain telegraphers prior to the date the office was closed, January 2, 1939. Detail of occupancy and rents collected was not furnished.

Rule 20 (b) has been in the contract since November 1914 without change and Rule 20 (c) since April 1919 without change, except for substitution in agreement effective January 1, 1924 of the word "isolated" for "obscure."

In November 1919 a freight terminal was established at Soldier Summit, Utah. Since there was no town located at or near that station, it was necessary for the carrier to build a hotel and eating house and provide cottages and living quarters for the employes in the same manner as at Bond. The Soldier Summit terminal was transferred to Helper, Utah in January 1930.

Following the establishment of the terminals at Soldier Summit in November 1919, and at Helper in January 1930, conditions similar to those in the Bond case no doubt existed, and the rental question must have presented itself and necessitated interpretation of Rule 20 (b) and (c) by the parties. Assuming such interpretations were made, disposing of the question at Soldier Summit, Helper and possibly other similar points, that part of the Bond claim relating to collection and refund of rentals should be remanded to the parties for disposition on the basis of prior interpretation and application of Rule 20 (b) and (c).

If the parties are unable to adjust the dispute, it may be returned to this Board with such additional facts relating to the practice at Soldier Summit, Helper and other similar points, as would have bearing on the instant case.

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 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 Board finds it unnecessary and does not pass on the first part of the claim relating to free living quarters. That the second part of the claim relating to collection and refund of rentals shall be remanded to the parties for further handling on the property.

AWARD

The Board does not pass on the first part of the claim relating to free living quarters. The second part of the claim relating to collection and refund of rentals is remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of October, 1939.