

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

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."

STATEMENT: This is a resubmission of the case covered by Award 969 in which the Board remanded the matter for further handling. The facts and arguments set forth in Award 969 as well as in the resubmission of the case will not be restated.

OPINION OF BOARD: The claim, as originally stated, was previously referred to this Division, resulting in Award 969. In that award the second part of the claim was remanded for further handling on the property. There was a failure to reach an adjustment when the claim was further handled, and the dispute that was remanded has again been referred and is here for decision.

As expressed in the opinion that is part of Award 969, the second part of the claim, relating to collection and refund of certain rentals, was remanded for disposition on the basis of prior interpretation and application of Rule 20 (b) and (c) at Soldier Summit, Helper, and possibly other similar points. The rentals just mentioned were those collected by Carrier from telegrapher-employees for occupancy of houses the Carrier has erected for use of employes at Bond. The refund claimed is of these rentals. The right to a refund turns on whether there was to be free occupancy of these houses by claimants under Rule 20 (b) and (c).

It is now clear that the situation at Helper, referred to in the opinion, is to be eliminated from consideration for the reason Helper was not an isolated point within the meaning of the rule. At all times that would be material to the problem before us, there was a civilian population making a town at Helper and privately owned properties available for living quarters on a rental basis.

A joint statement is in the docket showing the following facts that obtained at Soldier Summit. Some telegraphers at that point including the agent were furnished free living quarters as provided in Rule 20 (c) prior

to November 1919. At some time during that month a district freight terminal was established. Thereafter free living quarters were provided for some telegraphers including agents until such time as adequate houses were available on a rental basis, after which some telegraphers including agents paid rent for occupancy of company houses. During the time Soldier Summit was a district freight terminal there were some privately owned houses available on a rental basis. Soldier Summit was continuously a district freight terminal from some time in November 1919 until January 1, 1930.

Additional to the foregoing, it is averred in Carrier's supplemental statement that the division records have been destroyed that pertain to free living quarters furnished telegraphers at Soldier Summit prior to and just subsequent to November 1919, but that no doubt it is true same were furnished prior to November 1919, because Soldier Summit then being an isolated point, living quarters could not otherwise be secured by telegrapher-employees.

In the light of all the foregoing, it is the opinion of the Board that the interpretation and application by the carrier of Rule 20 (c) at a point such as was Soldier Summit prior to November 1919, is not in disagreement with the Petitioners' claim that, under the rule, such living quarters were to be furnished free.

However at some time following November 1919 a civilian population came to Soldier Summit, and various businesses other than carrier's sprung up, houses and apartments owned by others than the carrier became available for rental purposes, and Soldier Summit became a town with a population of several hundred. The parties concede that it was then no longer an isolated point within the meaning of the rule. But after November 1919 the carrier was still furnishing telegrapher-employees free living quarters at Soldier Summit. It appears from the record that it was in April 1921 when the carrier first charged rentals for houses occupied by telegrapher-employees. At that time, as claimed by Petitioner and not denied by Carrier, there were many privately owned houses and apartments available for rent, in addition to the houses the carrier had erected, and Soldier Summit was a thriving town of about 800 population, having a number of private businesses in operation, and two churches and a school.

In its inception in 1934, Bond was an isolated point within the intentment of Rule 20 (c). The record shows the telegraph-employees were at times greatly inconvenienced by dearth of any living quarters at all. Such as were made available by carrier were furnished free for several years. It was in May 1937 that the carrier began charging rentals for houses occupied as living quarters by telegrapher-employees at Bond. A little before this the carrier has taken the position that it would furnish living quarters only on condition rentals were paid for their occupancy. It is a refund of rentals required by carrier beginning in May 1937 and continuing for a period thereafter, that the instant dispute involves.

No disappearance or lessening of the isolation of Bond marked the commencement of charging rentals at that point. There never has developed a town at Bond. It has always remained an isolated point as shown in this docket. There were no privately owned properties at Bond in May 1937 or thereafter that were available for rental as living quarters. So long as that status continued the carrier's previous interpretation and application of the rule at Soldier Summit, was, in the opinion of the Board, quite inconsistent with the exacting of the rentals here involved. It is significant that at Soldier Summit the inauguration of charging of rentals was coincident with the isolation of that point disappearing. Until isolation was out of the picture there was a continuing recognition by the carrier of duty to furnish free living quarters. That was a logical course on part of the carrier, for having recognized that there was an obligation to furnish free living quarters at isolated points, carrier would be hard put to discover an avenue

of escape from its duty in that respect so long as the point was an isolated one. To do so was not attempted at Soldier Summit. It should not have been attempted at Bond, in the opinion of the Board.

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 under the interpretation and application of Rule 20 (c) as shown in this docket, the charging of the rentals involved was violative of the Rule and the rentals exacted should be refunded.

AWARD

Claim sustained per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.