

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swain, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Great Northern Railway,

- (1) that Telegrapher L. M. Michels be paid under Rule VI-(c) of the Telegraphers' Agreement \$1.70 deadhead time based upon train service time existing May 8, 1941, between Swan River, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point;
- (2) that Telegrapher Ella H. Leazott be paid under Rule VI-(c) of the Telegraphers' Agreement \$5.28 deadhead time based upon train service time existing April 25, 1941, between Scranton Mine, Minn., where she had been performing relief service, and Superior, Wis., her extra board home point;
- (3) that Telegrapher John Stokes be paid under Rule VI-(c) of the Telegraphers' Agreement \$5.28 deadhead time based upon train service time existing April 25, 1941, between Calumet, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point;
- (4) that Telegrapher Fred Stuenkel be paid under Rule VI-(c) of the Telegraphers' Agreement \$5.12 deadhead time based upon train service time existing April 25, 1941, between Emmert Tower, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point;
- (5) that Telegrapher E. M. Kozlik be paid under Rule VI-(c) of the Telegraphers' Agreement \$1.75 deadhead time based upon train service time existing April 25, 1941, between Grand Rapids, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point;
- (6) that Telegrapher Holger Mortensen be paid under Rule VI-(c) of the Telegraphers' Agreement \$1.65 deadhead time based upon train service time existing April 25, 1941, between Gunn, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point;
- (7) that Telegrapher Esther Sederstrom be paid under Rule VI-(c) of the Telegraphers' Agreement \$5.12 deadhead time based upon train service time existing April 25, 1941, between Nashwauk, Minn., where she had been performing relief service, and Superior, Wis., her extra board home point;

- (8) that Telegrapher L. S. Rutter be paid under Rule VI-(c) of the Telegraphers' Agreement \$5.12 deadhead time based upon train service time existing April 25, 1941, between Emmert Tower, Minn., where he had been performing relief service, and Superior, Wis., his extra board home point.

JOINT STATEMENT OF FACTS: On April 6th, 7th and 8th, 1941, due to opening of additional new positions, the following extra telegraphers were sent to fill vacancies as listed next below, for which they were paid deadheading allowances from extra board home point at Superior, Wis., to point of service, based on existing train service, as per Article VI-(c) of Telegraphers' Schedule No. 6 effective September 1st, 1936:

1. L. M. Michels	2nd trick	Swan River, Minn.
2. Ella H. Leazott	1st trick	Scranton Mine, Minn.
3. John Stokes	2nd trick	Calumet, Minn.
4. Fred Stuempges	1st trick	Emmert Tower, Minn.
5. E. M. Kozlik	2nd trick	Grand Rapids, Minn.
6. Holger Mortensen	2nd trick	Gunn, Minn.
7. Esther Sederstrom	2nd trick	Nashwauk, Minn.
8. L. S. Rutter	2nd trick	Emmert Tower, Minn.

On April 15th, 1941, in accordance with schedule rules, these new positions, together with numerous other positions, were bulletined for permanent assignments, and each of the above claimants was the successful bidder on the same position they were filling temporarily as extra telegraphers, except claimant No. 1, who was the successful bidder on the 3rd trick at Swan River instead of the 2nd trick, and claimant No. 3, who was the successful bidder on the 1st trick at Calumet instead of the 2nd trick. Claimants thereupon presented claim for deadheading allowance back to the extra board home point at Superior, which claim was denied by the carrier. Such claims amounted to 2½ hours each for claimants Nos. 1, 5 and 6, and 8 hours each for claimants Nos. 2, 3, 4, 7 and 8, all based on existing train service.

Telegraphers' Schedule, Article VI-(c) provides:

"(c) Extra or relief employees deadheading on Company's business will be paid at the hourly rate of position to which assigned for time en route to and from point of assignment, based on existing train service, but not to exceed eight (8) hours for each twenty-four hours or less en route. A single extra board home point will be designated on each seniority district, to and from which deadheading will be figured. Employees deadheading from one point of service to another point of service without intervening return to home point will be paid as between such two points of service."

POSITION OF EMPLOYEES: The question involved in this claim is for the payment of deadhead allowance from point of service back to the home point as provided for in Article VI-(c) of Schedule No. 6 between The Order of Railroad Telegraphers and the Great Northern Railway Company effective September 1, 1936.

Article VI-(c) reads: "Extra or relief employees deadheading on Company's business will be paid at the hourly rate of position to which assigned for time en route to and from point of assignment, based on existing train service, but not to exceed eight (8) hours for each twenty-four hours or less en route. A single extra board home point will be designated on each seniority district, to and from which deadheading will be figured. Employees deadheading from one point of service to another point of service without intervening return to home point will be paid as between such two points of service."

It is agreed in the joint statement of facts that Superior, Wisconsin, is the "home point" for extra employees involved in this claim and that each of the eight employees here involved was paid deadhead travel time from Superior

that the extra employee sent out by the Carrier is entitled to deadheading from the headquarters point to the point of service. It is also conceded by the Carrier that an extra employee returning to the extra board from temporary extra service is also entitled to deadheading from the point of service to the extra board headquarters point; both of such moves being interpreted as Company business.

However, such condition does not here prevail. While engaged at such temporary work, and without knowledge of what disposition the Carrier might wish to make of him on its completion, these employees bid upon the **permanent** assignment to the same position, and being the senior bidder, thereupon acquired sole right to such permanent assignment, as provided by schedule Article V (e), which reads in part: "Successful applicant shall be considered as assigned to the new position as of the date bulletin closes," thereby removing himself from the extra board, and the Carrier thereupon lost any right to require him to continue on the extra board, to return to the extra board headquarters, or to perform any other extra work. The claim, therefore, is to the effect that the Carrier must pay deadheading for a movement which not only never took place, but which the Carrier could not require be made. It is further evident that such loss of his services as an extra man was not by reason of any action of the Carrier, but solely by reason of the employee's own voluntary action. The Carrier denies that such voluntary action on the part of the employee, or a theoretical return to the extra board home point, which the Carrier not only did not require, but **could** not require, and which never took place, constitutes deadheading on Company's business in any degree.

Article VI (c) provides for three things, and all three of them for extra or relief employees only; first, payment of deadheading from the extra board home point to point of service; second, payment of deadheading from the point of service to the extra board home point when returned to the extra board; third, payment of deadheading from one point of service to another point of service when made without intervening return to the extra board home point. Of such three provisions, the first is the only one that was either required by the Carrier or which occurred. The second did not occur, nor was it ordered by the Carrier. The third did not occur, nor was it ordered by the Carrier. Such return to the extra board, or the performance of other extra service, neither occurred nor was it ordered by the Carrier because the employee, by his own action, removed himself from the classification of an extra employee, and from responsibility for any further extra or relief work, and placed himself outside of the Carrier's jurisdiction to handle him thereafter as an extra employee, just as he relieved himself of any further responsibility to comply with the provisions of the seventh paragraph of Article VI (b), which provides that: "Extra list employees, upon completion of any assignment, must notify the proper officer of their availability and whereabouts." Being no longer an extra employee, by virtue of being the successful applicant for a permanent assignment, the claimants here were no longer available for extra work, they did not notify any officer of their availability for such extra work, and they received no instructions from the Carrier as to any further movements, nor as to either the performance of any further extra work or return to the extra board to await such further extra work.

Being no longer an extra board employee under Article V (e), having not reported themselves as available for further extra service under Article VI (b), and having neither been instructed to nor required by the Carrier to go anywhere or do anything as an extra employee under Article VI (c), certainly no payments which accrue to extra employees only, for movements on Company business only, are payable.

OPINION OF BOARD: This Docket presents the claims of eight different employees for deadhead time based upon train service time between various points where they had been performing relief service and their extra board home point, the claims all being predicated on Article VI-(c) of the Agreement.

In each of these cases the employees involved bid in and were permanently assigned to positions at stations where they were performing extra service and none of said employees in the period intervening between their working as extras and their working as regularly assigned employees actually travelled back to their extra board home point. In fact, they were assigned by the Carrier to the extra work at stations where they had indicated they would bid for and prefer to be assigned to regular work.

Both the Carrier and the Organization agree that actual travel is not necessary to entitle extra men to deadhead time under the provisions of this Rule, citing cases where the Carrier has paid such deadhead time to such employees who lived in the town where they were performing the relief service but were allowed deadhead time to the extra board home point at another town.

By their practice and agreement the parties have furnished an interpretation of the Agreement which binds the Carrier to pay the arbitrary amount of deadhead time to extras performing relief service to and from the point of temporary assignment.

In the instant case the Carrier insists that this Rule applies only to extra or relief employees and that these claimants became regular employees when they bid in the positions at the stations where they were doing relief work.

For the purpose of the application of this Rule, we do not believe these claimants were regularly assigned employees on the positions bid in until they began work on their first tour of duty on such positions as regularly assigned employees. It follows, therefore, that when they finished their last tour of duty as extras, they were extra employees within the meaning of the Rule and continued to be such extra employees until they actually began to work as regularly assigned employees.

They were, therefore, entitled under the provisions of Article VI-(c), as interpreted and applied by the parties, to deadhead time for the return to extra board home point.

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 Carrier violated the Agreement as alleged in each paragraph of the claim.

AWARD

The claim is sustained as to each paragraph.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.