

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher Harry Sharpe be compensated for one day, eight hours, at the rate of pay at Sparks, Salt Lake Division, account transferring from Sparks to Lucin, Salt Lake Division, June 21st, 1939, in the exercise of seniority.

EMPLOYES' STATEMENT OF FACTS: Claimant Harry Sharpe, an extra telegrapher, working at Sparks, relieving the Agent there, bid on and was assigned to the position of Agent-telegrapher at Lucin. Upon completing his extra assignment at Sparks, he went to Lucin to take over his assignment at Lucin.

He originally filed claim for deadhead time (Rule 8) in the amount of eight (8) hours. The claim was declined. On July 14th, 1939, he resubmitted the claim under Rule 11. The Carrier rejected the second claim, Chief Dispatcher Smith, Ogden, Utah, letter of July 15, 1939, which we quote:

"Ogden, July 15, 1939.

Mr. Harry Sharpe, Agent,
Lucin:

Attached Form 2460-A and yours July 14, concerning DH compensation Sparks to Lucin.

The operation of the rules in cases such as yours is: When an extra man becomes assigned while working an extra position from which he is entitled to DH compensation, he moves from said extra position to his headquarters or to point of assignment as ordered and is paid compensation accordingly. If to headquarters compensation is not paid from headquarters to point of assignment.

F. W. Smith 1."

There is an agreement in effect between the parties to this dispute and that agreement is on file with this Board.

POSITION OF EMPLOYES: EXHIBITS "A" to "G" are herewith submitted and made a part of this submission.

The claim was first filed under Rule 8 and the Carrier rejected the claim. We quote Rule 8—

OPINION OF BOARD: The facts are these: Claimant, an extra telegrapher performing temporary relief service at Sparks, Nev., headquarters, or extra board location for extra telegraphers, was notified on June 14, 1939, that he was assigned the position of agent-telegrapher at Lucin, Nev., bulletined as No. 8, June 2, 1939. No mention is made therein of the date upon which the assignment was to become effective. Claimant's relief work as extra telegrapher was completed at Sparks June 15th and from that date on he performed no further extra telegraph relief service. He remained stationed at Sparks until June 21st, on which date he traveled to Lucin to protect his newly assigned position, which was a regular assigned position. He went on duty there June 22nd.

Claimant presents a claim for one day's pay, deadheading from Sparks to Lucin. He says he based his claim at first on Rule 8. The claim was denied. He says he then re-submitted his claim under Rule 11, and it was again denied. Carrier says claim was first presented under Rule 11 and subsequently under Rule 8. We do not have to settle this dispute, as it is immaterial. All we have to do is to consider the controverted issue, whether claim is properly presented under either one of these two rules, for the employes claim it comes under one or the other and the Carrier contends it does not come under either one.

Rule 8, Deadheading:

"Extra telegraphers will be paid for time consumed for deadheading and relief service, etc."

If we stop after the word deadheading, i. e., "Extra telegraphers will be paid for the time consumed for deadheading," we might sustain the claim, but we have a Memorandum of Understanding interpreting this rule, agreed upon November 27, 1931, effective December 1, 1931.

Rule 8, Memorandum of Understanding—The applicable provisions are:

"(4) An extra telegrapher ordered by proper authority to deadhead for service shall be paid for time consumed deadheading as prescribed in Rule No. 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."

Subdivisions (b), (c) and (d) follow but none of the provisions therein apply in this case. It is to be noted that (a) says: "When deadheading for service, on instructions from proper authority." (b), (c) and (d) are all to the same effect, except that the word "ordered" is used instead of the words "on instructions." We must agree that the words are synonymous and mean the same thing.

In the instant case there is nothing in the record to indicate if, how and by whom the claimant may have been told when to report to his new position. The employes argue that the claimant must have been instructed or ordered by someone in authority to report on the day the position was to be occupied. We cannot agree this is definitely so. It may well be that Bulletin No. 8 of June 2, 1939, stated the date the position was to be filled, and that no further notice, instructions or orders followed Bulletin 8-A, which designated the successful bidder for the position, assuming the bulletin notices were sufficient to convey the necessary information as to when and where to report. It may well be that some of the successful bidders might not even have to displace themselves.

We conclude that Rule 8, as interpreted by the Memorandum of Understanding, does not apply in the instant case, for the reason there is no evidence in the record to show claimant was instructed to report to Lucin to protect his position. Claimant, therefore, is not entitled to deadheading compensation under this rule.

Rule 11, Transferring:

"(a) Time lost in transferring from one station or position to another shall be paid for at the rate of the position from which transferred. . . . The word 'transferring' includes transfer in the exercise of seniority and also time lost checking in and out of positions."

Note the rule says time "lost" instead of "consumed," as in Rule 8.

It being a fact that claimant was idle and not working for six days prior to June 21st, the date on which he travelled, and there being no evidence in the record that he would have been assigned and would have worked on the 21st had he not been obliged to travel on that day in order to protect his newly assigned position, it follows that he lost no time and consequently no pay. So again we are confronted with a situation where the rule invoked does not apply.

But claimant undertakes to contend that he was a regular employe from the time he was notified by Bulletin No. 8-A, bearing date of June 14th, and that he travelled as such. This is the claim he made June 14, 1939, when he filed renewal of his claim, in which he designated himself as "regular assigned employe" under Rule 5, and based his claim very definitely on that rule and Rule 11.

Rule 5, Guarantee:

"Regular assigned telegraphers will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled if ready for service and not used

"A regular assigned telegrapher is one who is assigned to a position by bulletin."

We must assume from this last above sentence that the bulletins indicate not only location and position, but also the date on which the assignment becomes operative. As remarked above, in the absence of the first bulletin listing the position considered in this case, it is impossible to reach a definite conclusion on this point, not being conversant with the practice, but we think we are warranted in making the above assumption. We think we are further warranted in assuming the bulletins constitute all the notice required to be given to successful bidders, not only that the assignments are granted but that they are to be protected on a stated date. In such a situation positions are not to be construed as assigned until such time as work is actually begun thereon, in the instant case June 22, 1939. To repeat, it follows Rule 11 does not apply and claimant is not entitled to compensation for travel from Sparks to Lucin on June 21st.

We are asked to consider whether the Carrier has placed a different construction in the interpretation of this rule and whether, by reason of the fact it has honored claims which employes contend are similar to this one, it should also pay the present one. Four cases are called to our attention. First, the two cases that were settled prior to the adoption of the Memorandum of Understanding no longer constitute precedents, and the other two which arose and were settled since, are not analogous to this one.

The Petty case is one in which the claimant was deadheaded to Laws to relieve the agent there. He was paid for this. While at Laws, he became regularly assigned to Westwood and was instructed to go there for his assignment upon being relieved at Laws. He deadheaded to Westwood and was paid.

The Drown case is similar to the Petty case, except that it does not appear that claimant was first sent by the Carrier to Beowawe for relief work. Claimant was ordered by the Carrier to proceed from Beowawe to Westwood to protect a newly acquired regular position, and the letter of settlement defi-

nitely states, and lays special emphasis on the fact, that the basis for settlement is because the Carrier ordered the claimant to travel, referring to the Memorandum of Understanding.

The conclusion reached obviates the necessity of answering whether presentation of the claim is too belated to receive consideration.

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 employe involved in this dispute are respectively carrier and employe 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 claimant is not entitled to a day's pay for deadheading.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1943.