

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 L. R. Carver be compensated for eight hours dead-heading under Rule 8 of the Telegraphers' Agreement, account moving from Calexico where his position was abolished, to the headquarters of extra telegraphers, Los Angeles, March 28, 1940.

EMPLOYES' STATEMENT OF FACTS: Claimant Carver filed application for the position of third telegrapher, Calexico, Los Angeles Division, which was bulletined under the provisions of Rule 19 (c) of the agreement in effect. Claimant was the successful applicant for this position. He was assigned as the regular occupant of the position as defined in Rule 5—

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

The position to which the Claimant was assigned was abolished by the Carrier, Mr. F. E. Kalbaugh, file K-271.

At the time the position in question was abolished, Claimant was the junior regularly assigned telegrapher on the entire Division, or in other words, no telegrapher junior to the applicant held a regularly assigned position on which the Claimant was entitled to perform service.

Such a condition defined positively the status of Claimant as an extra telegrapher. As an extra telegrapher, he became subject to the provisions of Rule 8 of the agreement and the Memorandum of Understanding dated San Francisco, California, November 27, 1931.

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" inclusive are herewith submitted and made a part of this submission.

The dispute is prosecuted under Rule 8 of the Agreement and the Memorandum of Understanding dated November 27th, 1931, both being a matter of record with this Board.

EXHIBITS "B" and "D" herewith submitted set forth the claim in accordance with agreement provisions.

The Committee refers to Carrier EXHIBITS "A", "C", "E" and "G", takes exceptions to the position of the Carrier and comments thereon as follows:

who has been ordered by proper authority to deadhead for service and who completed said service; if both of these conditions precedent exist, then the carrier must—if it does not order him to another station—order him to headquarters and pay him deadhead allowance as provided for in Rule 8 quoted supra.

The claimant went to Calxico in December 1939 not as an extra telegrapher being ordered to said point by proper authority. He went there to place himself on a regular assignment which he had been awarded on a seniority basis. He occupied said regular assignment for more than three months, or until March 28, 1940, when it was abolished. Such being the case, paragraph (b) is in no way applicable to the instant case for the reason that neither of the conditions precedent, mentioned above, necessary to bring paragraph (b) into operation existed.

CONCLUSION

The carrier asserts that its foregoing position conclusively establishes that it is incumbent upon the Division to either dismiss or deny the alleged claim in the instant case.

OPINION OF BOARD: Previous to March 28, 1940, Claimant Carver was doing a regular telegrapher's work at Calxico, obtained by reason of the exercise of his seniority rights. On that date the position was abolished. He then automatically became an extra telegrapher. No other regular junior position being available at that station, he immediately proceeded to deadhead to Los Angeles, his headquarters, as extra telegrapher. His claim is that he is entitled to one day's pay for deadheading.

Rule 8, "Deadheading," provides that: "Extra telegraphers will be paid for time consumed for deadheading . . .," and as interpreted by "Memorandum of Understanding" adopted November 27, 1931, effective December 1, 1931, provides further: 4 (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."

Claimant was not ordered "elsewhere for service," nor was "he ordered to deadhead to headquarters"; therefore, the Carrier contends he is not entitled to his day's pay for deadheading. The contention must be sustained.

Rule 8, together with Memorandum of Understanding, applies strictly throughout to extra telegraphers doing extra work. It has no application whatever to regular telegraphers doing regular work, even though when such regular work is discontinued, regular telegraphers, by reason of juniority, not having available any other regular or extra telegraphers who can be displaced by them, automatically become extra telegraphers.

If Rule 8, Memorandum of Understanding, 4 (b), reading:

"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,"

is ambiguous when applied to an extra telegrapher doing extra work, deadheading back to headquarters, as is said in Award 318, it becomes much more ambiguous when we seek to apply it to a regular telegrapher who loses his position by reason of discontinuance or displacement. Rule 8 from beginning to end, as stated above, applies to extra telegraphers only, doing extra work. In view of the fact Award 318 decides that deadhead time is to be paid only while traveling under orders, and that deadhead time returning to base from a station where an extra telegrapher, by his right of seniority, had come to displace another extra telegrapher, is not allowable, it follows with much greater force that such deadhead time is not allowable in the case of a regular telegrapher, who, by reason of his seniority rights, had proceeded to

a station to displace another regular telegrapher, and who afterwards finds himself automatically an extra telegrapher because his position was discontinued or because he, himself, was displaced. See also Award 319.

The point involved in the instant case, to wit: whether a regular telegrapher becoming an extra telegrapher is entitled to be ordered at once upon completion of his service to another station or to his headquarters, is not present in Award 318, but, as is said therein, if the rule does not apply to an extra telegrapher deadheading back to headquarters after completion of extra work, acquired by exercise of seniority rights, how can it apply to a regular telegrapher who becomes an extra telegrapher just because, upon completion of regular work, he has no regular position in sight or extra work which he can displace?

Two elements are necessary for the application of the rule: First, an extra man must be ordered to report to a station other than his headquarters for the performance of extra service; and second, the extra service must have continued throughout and be completed before he can, in the absence of orders to report elsewhere or to report to headquarters, invoke that part of the rule, 4 (b), which says, "he shall be ordered to headquarters," and claim the violation of the rule by the Carrier entitles him to deadhead to headquarters and receive compensation therefor, orders or no orders.

Neither of the two elements are present in the instant case. The Claimant was not originally ordered to Calxico for extra work, nor did he perform extra work there.

In the instant case the Claimant is not entitled to deadhead time returning from Calxico to Los Angeles because of the fact he was not ordered to Calxico in the first place as an extra telegrapher to do extra work, and because, therefore, Rule 8, as interpreted by Memorandum of Understanding 4 (b), does not apply in his 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 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 Carrier did not violate the Agreement.

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.