

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 extra telegrapher B. A. Benson be compensated for travel time under Rule 8 of the Telegraphers' Agreement account moving from San Francisco to Sparks, Nevada, August 4, 1939 and moving from Sparks to San Francisco, August 18, 1939.

**EMPLOYES' STATEMENT OF FACTS:** Claimant Benson is carried on the Towermen's seniority roster of the Western Division. He is qualified as a telegrapher, Morse code.

August, 1939, he was sent to Sparks, Salt Lake Division, to perform necessary service for the Carrier. He traveled on train No. 14, August 4th, 1939, leaving San Francisco 8:35 A. M., arriving Sparks 5:25 P. M., the same date. He was released from duty at Sparks at the completion of his tour of duty, 8:00 A. M., August 18th, 1939. He traveled Sparks, Salt Lake Division, to San Francisco, leaving Sparks, 9:05 A. M., August 18th, 1939, train No. 241, arriving San Francisco, 6:15 P. M.

He claimed compensation under Rule 8. Payment was refused.

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

Claim is filed and prosecuted under Rule 8 of the agreement and the Memorandum of Understanding dated San Francisco, Calif., November 27th, 1931.

EXHIBIT "A" is the tracer filed with the Central Timekeeping Bureau by the Claimant because of shortage in the amount of compensation allowed him for the first and second half of August, 1939. Failure of the Carrier to notify Claimant Benson that his claim was not allowed was a violation of Rule 28 of the Agreement, which we quote:

"RULE 28.

Disallowed Claims

If claims for compensation on any account are not allowed, telegraphers will be promptly notified and given reason therefor."

with the claimant's request and offering him work at Sparks cannot be considered as constituting an order to deadhead to Sparks and return. The claimant, in traveling from San Francisco to Sparks and return, did so merely to obtain work that he had requested. When the claimant completed his assignment at Sparks he returned to San Francisco in order to be in a position to accept such work as might be available on his home division. The carrier asserts that, not having ordered the claimant to deadhead from San Francisco to Sparks or from Sparks to San Francisco, the alleged claim is without merit, for it is not supported by Rule 8, the memorandum of understanding of November 27, 1931, or any rule of the current agreement.

#### 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 this docket.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

Carrier reserves the right if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this the carrier's initial submission.

**OPINION OF BOARD:** The agreed facts are that the Claimant Benson, primarily a towerman on the Western Division, with headquarters at Oakland Pier, but also qualified as a telegrapher, was, on the 4th day of August, 1939, unemployed because of lack of work either as a towerman or telegrapher, a situation which had previously existed at times. On these occasions he had requested that he might be loaned to other Divisions where work he was qualified to perform might be available.

A new telegrapher's position was created at Sparks, Salt Lake Division. This position had been bulletined. The Carrier wished it to be covered temporarily, awaiting protection by the successful bidder, so Benson was offered the work. He accepted it and was loaned to the Salt Lake Division. He traveled from San Francisco to Sparks on August 4th, in order to be there to assume this temporary assignment at once.

Benson had seniority rights on his own Division, the Western, but had no seniority rights on the Salt Lake Division. He worked at Sparks as telegrapher from August 4th to August 18th, on which date the position was protected by the successful bidder, so he returned to San Francisco. His claim is for two days' pay deadheading, as he calls it, both to and from Sparks. He relies on Rule 8 of the 1927 agreement, as interpreted by the Memorandum of Understanding agreed upon November 27, 1931, effective December 1, 1931.

Rule 8 reads:

"Deadheading—Extra telegraphers will be paid for time consumed for deadheading and relief service."

As interpreted, it further reads:

"(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 ———.

"(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 ———."

The first question that arises is whether Claimant was an extra telegrapher or not. The Committee claims he was. The Carrier claims he was not. We do not have to decide this question, for even though we may assume he was, the result arrived at will be the same. There is no evidence in the record that Claimant was either ordered or instructed to deadhead to and from Sparks. The only evidence Claimant points to is in the form of two telegrams, reading:

"San Francisco Aug. 3, 1939

C. F. Flynn, Sparks  
J. C. Goodfellow, Ogden

The Western Division is loaning Telegrapher B. A. Benson who will reach Sparks tomorrow evening and report on third trick 1201 AM Aug 5th on newly established position F-161

A W Flanagan"

"Ogden, Aug. 20, 1939

AWF SF

Telgr M C Kuhn assumed assignment third telgr Sparks 1201 AM  
19th releasing Telgr Benson S-202

JCG"

We are unable to see wherein either telegram constitutes orders or instructions to Claimant to, first, deadhead to Sparks, and, second, to deadhead back to San Francisco. Both telegrams only transmit information from one official to another official or officials of the Carrier as to what will happen and what has happened. There is no evidence they were ever communicated to the Claimant so that he might thus have impliedly concluded that he was ordered or instructed to deadhead to and from Sparks.

The Committee's assertion in its exparte submission of claim that the first telegram is conclusive evidence that Claimant was instructed to make the trip does not follow, and it is significant that in referring to the second telegram in this same exparte submission, the Committee only asserts that it "indicates Benson was expected to return to San Francisco." Of course, Benson was expected to go to Sparks to assume the position he had previously requested might be assigned to him when available and when he was out of work, and when the work was completed to return to headquarters, but this is far from saying he was ordered or instructed to deadhead in order to perform extra or relief service. We are unable to see on what ground we can honor this claim.

The Committee calls attention to what is claimed to be a similar case which was honored by the Carrier. The record, as far as it goes, discloses that the reason that particular claim was paid was because the employe was "sent to Sparks to relieve ———." This indicates orders or instructions. In the instant case even implication of orders or instructions is lacking. We have nothing more than a man who wishes to be loaned to other Divisions where and when work is available, and when he, himself, is idle. The employment is in furtherance of his wishes (even though it may be said also to be in furtherance of the Carrier's business), when advised a position is temporarily available. We assume he may or may not accept the assignment. We assume further that he may not be ordered to accept, but if he does accept, it does not necessarily follow that because he has to report to the station

where the work is to be performed, that he must be ordered and instructed to deadhead to that station. It is quite different from a case where the available assignment is on his own Division, where he has seniority rights and where he is entitled to be assigned and perform services assured or guaranteed to him by his seniority rights or any rules of the Agreement.

**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 deadhead pay from San Francisco to Sparks and return.

#### 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.