

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 E. L. Poston be compensated for travel time, Manteca to Oakland Pier, Western Division, February 28th, 1938 under Rule 8 of the Telegraphers' Agreement in effect on that date and the Memorandum of Agreement dated November 27th, 1931 pertaining to the interpretation and application of that rule.

EMPLOYEES' STATEMENT OF FACTS: Claimant Poston was regularly assigned telegrapher at Manteca, Western Division. He was displaced by a telegrapher his senior effective February 27th, 1938. There was no regularly assigned telegrapher on the Western Division junior to Claimant Poston. Claimant Poston became an extra unassigned telegrapher immediately he was displaced and in that status deadheaded to his headquarters, claiming payment for such deadheading. Claim as presented was paid and thereafter deducted.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties to this dispute and the agreement is on file with this Board.

The claim has been handled in the usual manner, by correspondence and in conference, the last conference being held December 17, 1942.

The claim is filed under Rule 8 and the Memorandum of Understanding dated San Francisco, Calif., November 27, 1931, both on file with this Board.

EXHIBITS "A" to "H" inclusive are herewith submitted and made a part of this submission.

EXHIBIT "A" briefly yet completely sets forth the actual circumstances surrounding the claim. The Claimant understood that he automatically reverted to the extra board at the conclusion of his service at Manteca and this must have also been apparent to the Superintendent of the Western Division when, on February 26th, 1938, he wired the Claimant that he would be displaced effective at the end of his trick on February 27th. That was the time the Claimant should also have been instructed as to his next move in conformity with paragraph 4 (b) of the Memorandum of Understanding. Failure of the Carrier to comply with the agreement provisions as set forth in the Memorandum should not militate against the interest of the Claimant.

EXHIBIT "B" contains a statement by the Carrier, "you do not become an extra telegrapher until arrival at home terminal."

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 in the instant case went to Manteca in February, 1938, not as an extra telegrapher being ordered to said point by proper authority. He went there to place himself on a regular assignment that he obtained through the exercise of his seniority. He occupied said regular assignment until February 28, 1938, when he was displaced. 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 this docket.

OPINION OF BOARD: The facts in this case are on all fours with the facts in Docket TE-2280, Award 2390, except that the claim for deadheading was paid when presented but afterwards deducted.

Claimant Poston was a regularly assigned telegrapher at Manteca, Western Division. He was displaced by a telegrapher his senior on the displacement effective February 27, 1938. There was no regularly assigned telegrapher on the Western Division junior to him whom he could displace. He, therefore, became an extra unassigned telegrapher immediately upon being displaced, and in that status deadheaded to his headquarters without being ordered to do so. His claim is for reimbursement of the amount originally paid to him for deadheading and afterwards deducted.

The result reached is the same as in Docket TE-2280, Award 2390.

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.