

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 H. F. Crawford be allowed travel time El Centro to Los Angeles, Los Angeles Division, January 29th, 1938, under the provisions of Rule 8 of the agreement in effect and Memorandum of Agreement pertaining to the interpretation and application of Rule 8, dated November 27th, 1931.

EMPLOYEES' STATEMENT OF FACTS: Claimant H. F. Crawford placed his application with proper authority for the position of second telegrapher-clerk El Centro, Superintendent's Circular A-9779, dated Los Angeles, August, 1937, assigning him this position. He held this assignment until displaced by Telegrapher Miller, January 13th, 1938.

On January 13th, 1938, there was no telegrapher junior in seniority to Crawford employed upon a regular assignment and therefore, Crawford became an extra unassigned telegrapher immediately the displacement exercised against him by his senior Telegrapher Miller, was acknowledged as received by proper authority, as accepted as stipulated in Memorandum of Understanding dated San Francisco, June 6, 1931, paragraph 3—"Acknowledgment of acceptance of such declaration shall constitute an assignment."

Claimant Crawford was used by the Carrier as an extra telegrapher upon his former regular assignment, which he lost by reason of being displaced, until January 29th, 1938. When relieved by Telegrapher Miller, Claimant Crawford who had been an extra telegrapher since January 13th, 1938 deadheaded to Los Angeles. His claim for deadhead compensation was denied by the Carrier.

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

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

The claim is filed under Rule 8 of the Telegraphers' Agreement and that Memorandum of Understanding dated San Francisco, November 27, 1931.

It will be noted that in both the original Rule and the Memorandum, the only conditions under which deadhead will not be paid to extra telegraphers are:

- 1—When deadheading to assert seniority rights over other extra telegraphers.
- 2—Under conditions as defined in Section 4 (d) of the Memorandum of Understanding dated November 27, 1931 in relation to the application of Rule 8 and we quote—

“(a) When deadheading for service, on instructions from proper authority, shall receive deadhead allowance from headquarters to station ordered, except as hereinafter provided.

“(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, except as provided in paragraph (d) of this Section.

“(c) At conclusion of service at a station, if ordered to deadhead to another station for service, allowance for deadhead shall be from last station worked to station ordered, except, if service to be performed at the station to which ordered, will not commence on the next date following the beginning of the last day's service at the last station worked—and if available passenger train service will permit the extra telegrapher to reach headquarters and then reach the station to which ordered in time to perform the service required, he will be paid deadhead allowance from the station last worked to headquarters, and from headquarters to the station ordered, provided he makes the trip to headquarters and thence to the station to which ordered.

“(d) If ordered to deadhead to headquarters, and, if before reaching headquarters, extra telegrapher requests and receives permission from proper authority to remain at some station other than headquarters, awaiting work, will not be paid deadhead allowance from station last worked to headquarters, but if subsequently ordered to deadhead to a station, for service, shall be paid deadhead allowance from headquarters to station ordered.”

The carrier submits that paragraph (b) of Section 4 quoted above in no way supports the petitioner's contention. Paragraph (b) can not be read alone—and even if it were, it would not support the claim—but must be read together with the first paragraph and paragraph (a) of Section 4. When so read, it is immediately evident that it applies only to an extra telegrapher 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 in the instant case went to El Centro in July, 1937, 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 January 29, 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 agreed facts are that Claimant Crawford, the regular telegrapher at El Centro from 1937 to January, 1938, a position he had obtained by the exercise of his seniority rights, was displaced by another senior regular telegrapher who exercised his right of seniority. The effective date of assignment of the position was January 13th (Rule

21 (c-3)). The regularly assigned telegrapher, however, did not assume his position until January 30th. In the interim Crawford continued to cover the position. The Committee contends that during that period he was an extra telegrapher. The Carrier says it is immaterial whether he was an extra or a regular telegrapher, that in neither instance does Rule 8, Memorandum of Understanding 4 (b), apply.

We agree with the Carrier for the reasons enunciated in Docket TE-2280, Award 2390, and Docket TE-2339, Award 2394, this claim in all respects, other than those mentioned above, being similar to the claims presented in these two other dockets. The result reached is the same as in these other two awards.

In this docket our attention is called to the Shields' case, heard and decided by the Telegraphers' Adjustment Board, Decision No. 43 (Case No. 48), as authority for allowance of a claim like the present one and those covered in Dockets TE-2280 and TE-2339. The case is not similar. There the Board's decision is, "In view of the fact that Extra Telegrapher, Mr. H. A. Shields, did not deadhead Sacramento to Maxwell in the exercise of his seniority, but instead was ordered to deadhead Sacramento to Maxwell by the Carrier, the Board decides that the claim should be allowed."

The record in that case shows that Shields had originally been "ordered" to deadhead to Maxwell to perform relief service and was paid deadhead mileage for that trip, which accounts for the statement in the Board's decision that he "did not deadhead to Maxwell in the exercise of his seniority." The dissimilarity in the Shields case and the ones we are concerned with is immediately apparent.

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.