

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, 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 D. A. Keely be compensated for eight hours' dead-head under Rule 8 of the Telegraphers' Agreement, July 16, 1940, Ogden, Utah to Imlay, Nevada, Salt Lake Division.

EMPLOYEES' STATEMENT OF FACTS: Claimant D. A. Keely, an extra unassigned telegrapher, headquarters Ogden, Salt Lake Division, while working as an extra telegrapher at Montello, bid for and was assigned as a regular telegrapher at Imlay, Salt Lake Division, the position secured by him at Imlay being bulletined in July, 1940 under Rule 19 (c) of the agreement. When relieved from his extra assignment at Montello, Claimant traveled to Ogden and was compensated under Rule 8. After arrival at Ogden, he was sent to Imlay to take his regular assignment and compensation for time consumed Ogden to Imlay was denied him.

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

POSITION OF EMPLOYEES: EXHIBITS "A" to "H" inclusive are shown and made a part of this submission.

The claim is filed under either Rule 8 or Rule 11 as indicated by EXHIBIT "A".

The Carrier representative does in EXHIBIT "B" deny the application of Rule 8 to the dispute.

With this denial a matter of record, the claim was presented to the Assistant Manager of Personnel, (EXHIBIT "C"), under Rule 11.

The Assistant Manager of Personnel does in EXHIBIT "D" deny the applicability of Rule 11 or any other agreement provision.

At the conference held between the representatives of the parties to this dispute, both Rules 8 and 11 were considered in relation to the claim and the Carrier again declined payment.

The Committee therefore submits the claim under both Rules 8 and 11, asking that this Board in addition to sustaining the position of the Committee that the claim is proper, also declare under which of the two Rules the claim falls.

if the extra telegrapher performs eight (8) hours' service on day dead-heading he will receive eight (8) hours' pay in addition to the dead-head allowance."

Subsequent to the effective date of the current agreement (September 1, 1927), Rule 8 was supplemented by a memorandum of understanding dated November 27, 1931; a copy of said memorandum is shown and made part of this submission as Exhibit "F". The said memorandum which is essentially an amendment to and amplification of Rule 8, must be read in conjunction with the rule, for the latter cannot be applied except in conformity with the memorandum. We call especial attention to paragraph 4 of the memorandum which, considered in connection with Rule 8, leaves no doubt that the claim in this docket cannot be sustained by that rule.

The rule and the memorandum clearly contemplate the payment of time consumed by an extra telegrapher in making a deadhead trip to relieve another telegrapher, only when the relief is to be temporary and only when the deadhead trip is "ordered by proper authority." The allowance is made only to employees who retain their status as extra telegraphers while working at the point where the relief is made; and even then, no allowance is made if an extra telegrapher is traveling for the purpose of asserting seniority rights over other extra telegraphers.

In the instant case, the claimant was not traveling as an extra telegrapher for the purpose of making a temporary relief. He was proceeding to Imlay to occupy a regular assignment which he had obtained by his own voluntary choice, through the use of his seniority. He had not been ordered by anyone to deadhead to Imlay for service; on the contrary, he had bid for and accepted the Imlay assignment.

The carrier asserts that the foregoing conclusively establishes that Rule 8 of the current agreement in no way supports the claim in this docket. The carrier further asserts that no other rule of the current agreement supports the claim in this docket.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is without merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimant was an extra telegrapher with headquarters at Ogden. While working as such at Montello in July 1940 he bid for and was assigned a position as a regular telegrapher at Imlay. Upon the completion of his assignment as extra telegrapher at Montello on July 14, he deadheaded, under orders, to Ogden. For this trip from Montello to Ogden he was compensated in accordance with Rule 8 of the agreement.

On July 16th he deadheaded from Ogden to Imlay to take over his assignment as a regular telegrapher. His claim is for compensation for eight hours for time consumed in travelling from Ogden to Imlay. The claim is predicated on Rules 8 and 11 (a) of the current agreement.

Rule 8 provides:

"DEADHEADING

"Extra telegraphers will be paid for time consumed for deadheading and relief service, but shall not receive compensation for this service to exceed one day's pay of the telegrapher relieved for each 24 hours or fraction thereof en route to and from the assignment. This will not apply to extra telegraphers deadheading to assert seniority rights over other extra telegraphers.

"NOTE: Means that extra telegraphers will be paid actual time for deadheading, with maximum allowance of one (1) day's pay in each twenty-four (24) hour period, at rate of position relieved. * * *"

Rule 11 (a) provides:

"TRANSFERRING

"Time lost in transferring from one station or position to another shall be paid for at the rate of the position from which transferred, excepting such time as may be lost of the employe's own accord. The word 'transferring' includes transfer in the exercise of seniority and also time lost checking in and out of positions."

We have no doubt of the inapplicability of Rule 11 (a) to the situation presented here. By the clearest of implications that rule is designed to protect regularly assigned employes against time loss they would otherwise suffer in moving from one position to another.

As drafted Rule 8 is not free from ambiguity. In 1927 and 1928 two disputes arising under it were settled on the property. Claimant contends that by both these settlements the parties construed the rule as he now claims it should be construed. One instance (Wright's claim) would seem to be in line with claimant's contention here. There is, however, a distinguishing feature between this and Wright's claim. He was ordered directly from the station where he was working as an extra telegrapher to the station where he had bid for and had been assigned to a regular position. In the instant case claimant's only orders were to return to headquarters. The other instance (Fox's claim) was, we think very patently settled on a basis contrary to claimant's contention in the instant case. It is quite evident that the carrier took the same procedure as it took in the present instance—ordered Fox to headquarters (Sacramento), paying for time he consumed in travelling from the station where he worked as an extra telegrapher to that point only. In other words, the carrier declined, as it has here, to pay Fox for time consumed in travelling from headquarters to the station where he had bid in and had been assigned to a regular position.

Apparently in order to obviate disputes arising because of ambiguity in the rule the organization and the carrier, on November 27, 1931, entered into a Memorandum of Understanding designed to make its application clear and specific. So far as pertinent to this controversy the Memorandum of Understanding provides:

"(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.

'(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.'"

Subsequent to the adoption of the Memorandum of Understanding two claims were settled on the property—the carrier paying the respective claimants for time consumed in deadheading from the station where he was working as an extra telegrapher to the station where he bid in and was assigned to a regular position. In each instance it was conceded that claimant was "ordered by proper authority" to proceed from station where working to the station of bid for and assigned position.

The applicability of Rule 8 and the Memorandum of Understanding has recently been before this Board for consideration in disputes presenting a variety of situations. Awards Nos. 2389, 2390, 2392, 2393, 2394 and 2395. The sum and substance of the decision in each of those awards is that an extra telegrapher is not entitled to compensation under Rule 8, as interpreted by paragraph 4, 4 (a), 4 (b) of the Memorandum of Understanding, unless he deadheads "on instructions from proper authority." In all but one instance (Award No. 2393) the claims were denied because the claimants had not shown that they deadheaded "on instructions from proper authority." (In Award No. 2393 the dispute was remanded for determination of the fact, whether or not, claimant did travel "on instructions from proper authority.")

In all essential respects the situation presented here is indistinguishable from that presented in Award No. 2389. The claimant here, as there, deadheaded from headquarters to the station of assigned position; and there is no evidence that he made the trip "on instructions from proper authority." Unless Award No. 2389 (and in effect Award Nos. 2390, 2392, 2393, 2394 and 2395) be overruled this claim must be denied.

Unless palpably wrong this Board is never warranted in overruling, in a subsequent dispute between the same parties, a previous award construing the identical provisions of their contract. Certainly we are not justified in departing from the holdings in the awards mentioned. Manifestly, they are the result of a most painstaking consideration of the records, the claims settled on the property, Rule 8 and the Memorandum of Understanding. They should be accepted as binding; and the issue in controversy should be relegated to the realm of negotiation.

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 employee involved in this dispute are respectively carrier and employee 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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1944.