

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 J. B. Neff be compensated under Rule 8 of the Telegraphers' Agreement on the dates named and in the amounts specified herein:

Los Angeles to Yuma,	July 24, 1939, 7 hrs. 50 mins.	\$5.48
Los Angeles to Fresno,	Sept. 5, 1939, 7 hrs. 30 mins.	5.25
Fresno to Los Angeles,	Sept. 17, 1939, 7 hrs. 30 mins.	5.25
Los Angeles to Yuma,	Sept. 20, 1939, 7 hrs. 50 mins.	5.48
Yuma to Los Angeles,	Sept. 29, 1939, 7 hrs. 50 mins.	5.48
Los Angeles to Fresno,	Oct. 23, 1939, 7 hrs. 30 mins.	5.25
Fresno to Los Angeles,	Oct. 25, 1939, 7 hrs. 30 mins.	5.25
Los Angeles to Yuma,	Oct. 26, 1939, 7 hrs. 50 mins.	5.48

EMPLOYES' STATEMENT OF FACTS: Claimant Neff performed the travel time as claimed. Compensation is due him under Rule 8 of the Agreement and the Memorandum of Understanding dated November 27, 1931. Payment has been 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 "D" inclusive are shown and made a part of this submission.

The dispute is filed and prosecuted under Rule 8 of the Agreement and the Memorandum of Understanding pertaining to Rule 8, both on file with this Board.

The only excuse offered by the Carrier is that found in EXHIBIT "B"—

"Our investigation develops that the various moves undertaken by Mr. Neff, for which deadhead compensation is now being claimed, were not at the instance of the Company. He was simply informed that the work was available in the event he wanted it. He had the option of declining it, in case he did not care to avail himself of the opportunity."

We search in vain for any expression in the Rule or in the Memorandum that will support the position of the Carrier.

The Rule provides for the payment for time consumed in deadheading.

The Carrier does not dispute that the time was consumed.

In the present case, as in the cited case covered by Award 318, the claimant found it advantageous to travel away from his headquarters in order to obtain the work he so earnestly desired. It is true that he did not make that trip for the purpose of exercising a right of displacement as in the cited case; but that factual difference is immaterial to the principle involved, which, as clearly appears from the award, is that deadhead time is not payable where the trip is voluntarily undertaken by the telegrapher and for his own advantage, and not under the carrier's instructions.

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: In 1939 claimant was an extra telegrapher with headquarters at Los Angeles. At different periods in July, September and October, when there was no work for him on the Los Angeles Division, he went, with the consent of the carrier for service to Yuma and Fresno—on the Tucson and San Joaquin Divisions respectively. His claim is for compensation for time consumed in deadheading between Los Angeles and those points. His claim is apparently predicated on Rule 8 as interpreted in paragraph 4 (b) of the Memorandum of Understanding, executed by the organization and the carrier, November 27, 1931. Under the rule, as so interpreted, an extra telegrapher is entitled to compensation for time consumed in deadheading only when he proceeds on "instructions from proper authority." Awards 2392, 2393. We find no evidence in the record that claimant deadheaded on any of the trips for which compensation is claimed, on such instructions. In the absence of such evidence his claim does not come within the scope of Rule 8 as interpreted in the Memorandum of Understanding.

In all essential respects the dispute is indistinguishable from that in Award No. 2392. To sustain the claim would, in effect, overrule that award. As we stated in disposing of Docket No. TE-2454, Award No. 2517, we can find no justification for a decision producing such a result.

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.