

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 F. A. Drake, Coast Division, be compensated for 3 hours and 43 minutes' deadhead allowance, Watsonville Junction to San Luis Obispo, June 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: Claimant Drake, an extra un-assigned telegrapher, Coast Division, used in relief or extra service at Watsonville Junction, May, 1940, was relieved by return of the regularly assigned incumbent of the position.

Claimant was not properly advised by the Carrier concerning return of regularly assigned occupant of the position and this failure of the Carrier resulted in Claimant losing deadhead compensation, Watsonville Junction to San Luis Obispo, his headquarters.

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

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

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

Claimant worked the hours, 12:00 midnight to 8:00 A. M. and six hours and fifty minutes after he had completed his tour of duty at 8:00 A. M., May 31st, 1940, the Agent at Watsonville Junction, where Claimant was employed, received the following wire:

"Priest takes assignment job 3rd Tel. midnight date. Instruct Drake deadhead Salinas relieve second telegrapher 4:00 P. M. Sunday. J-612"

Two hours and five minutes later, the Agent received the following wire:

"Agent
Watsonville Jct

Cancel that portion my J 612 instructing Drake deadhead Salinas.

J 613"

Apparently it is the petitioner's position that there was an obligation on the part of the carrier to order the claimant to deadhead to San Luis Obispo upon the completion of his assignment on May 31, 1940, and that paragraph 4 (b) of the memorandum of November 27, 1931, supports said position.

Paragraph 4 (b) is as follows:

"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."

A review of the factual situation will disclose that not only is paragraph 4 (b) in no way applicable but that there is no agreement or other basis for the claim.

The claimant was relieving on the position of third trick telegrapher-clerk at Watsonville Junction. On May 31, 1940, immediately upon determining that the regular man was returning, the agent at Watsonville Junction was notified to instruct the claimant to deadhead to Salinas to relieve the second telegrapher at that point; however, prior to delivery of these instructions to the claimant they were superseded by instructions to contact the claimant and determine whether he desired to proceed to San Francisco in order to break in as a train dispatcher. It was not possible to locate the claimant until 6:00 P. M. on May 31, due solely to the fact that the claimant did not furnish a correct address. At that time the claimant was given the information regarding the matter of breaking in as a train dispatcher and was told to advise the superintendent's office of his decision, which he did not do until 9:30 the following morning (June 1); his decision was to proceed to San Francisco to break in on train dispatching work.

The fact that the claimant did not receive information as to there being no further work for him at Watsonville Junction and as to his future service, until 6:00 P. M. on May 31, 1940, was due solely to the fact that he could not be contacted sooner because of his failure to leave his correct address at the station. The carrier completely fulfilled its obligation to the claimant when it attempted to advise him of his rights as to future service immediately upon determining that the regular second trick telegrapher-clerk was to return to service on June 1, 1940.

The claimant having elected to go to San Francisco to break in on train dispatching work, to have ordered him to deadhead to his headquarters at San Luis Obispo or ordered him to deadhead for some other service would have been in direct opposition to his election to go to San Francisco. Therefore, having elected to go to San Francisco, the carrier did not order him to headquarters or to any other point for service, but permitted him to go to San Francisco, which he in fact did. He did not deadhead from Watsonville Junction to San Luis Obispo but went directly from Watsonville Junction to San Francisco.

The foregoing completely establishes that there is no basis for a claim of 3 hours and 43 minutes deadheading Watsonville Junction to San Luis Obispo on June 1, 1940, under Rule 8 (or the memorandum of November 27, 1931) or any other rule of the current agreement.

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: This claim, as that in Docket No. TE-2455, Award No. 2518, is predicated on Rule 8 as interpreted by paragraph 4 (b) of the Memorandum of Understanding executed by the organization and the carrier November 27, 1931.

Claimant was an extra telegrapher with headquarters at San Luis Obispo. The facts out of which the claim arose are as follows: Claimant was working as extra telegrapher, at Watsonville Junction. His tour of duty was from 12:00 midnight to 8:00 A. M. In the middle of the afternoon of May 31st the Agent at Watsonville received the following telegram:

"San Francisco, May 31, 1940

Agent . . . Wat Jct

Priest takes assigned job 3rd Teleg Clk midnight date. Instruct
Drake deadhead Salinas relieve 2nd Teleg. 4 PM Sunday J-612

E. C. Pearce
2:20 PM"

Shortly after that the Agent received telephone instructions from the Superintendent's office advising that Drake was not to proceed to Salinas. The Agent was told to tell Drake to get in touch with the Superintendent's office and advise whether he wanted to report at the dispatcher's office at San Francisco to break in for train dispatching work. This telephone conversation was partially confirmed by the following telegram to the Agent at Watsonville:

"San Francisco, May 31, 1940

Agent . . . Wat Jct.

Cancel that portion my J-612 instructing Drake D H Salinas.
J-613

E. C. Pearce
4:30 PM"

The information conveyed to the Agent in the telephone call and in the telegrams was not communicated to Drake until 6:00 P. M.—evidently too late for him to communicate with the Superintendent's office that evening. He did call up the Superintendent's office the next morning; and accepted the chance to go into the dispatcher's office at San Francisco.

Admittedly he was not "ordered by proper authority" to deadhead to headquarters after the order directing him to proceed to Salinas was cancelled. Had he received such orders he could have caught a train for San Luis Obispo at 9:00 P. M. May 31st. In failing to order Drake to deadhead from Watsonville to headquarters, the carrier clearly violated the letter of Rule 8 as interpreted in paragraph 4 (b) of the Memorandum of Understanding. The fact that next day Drake accepted the offer to go into the dispatcher's office at San Francisco is beside the issue and does not bring the claim within the exception of 4 (d) of the Memorandum of Understanding which in part provides:

"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. * * *

To bring a claim within the exception of that provision a claimant must have been "ordered to deadhead to headquarters" before requesting and receiving permission "to remain at some station other than headquarters."

The carrier contends that claimant was at fault in not leaving his correct address with the Agent at Watsonville. There is a conflict in the record on this contention, but we think it is without merit. It seems clear that the Agent did have knowledge of claimant's correct address at 4:00 P. M., yet did not communicate with him until about 6:00 P. M.

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 employes involved in this dispute are respectively carrier and employes 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 violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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