

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. D. DeHart, Tucson Division, be reimbursed in the amount of \$32.00 account room rent and transportation charges while performing service at East Yard, Tucson Division, an isolated point.

EMPLOYES' STATEMENT OF FACTS: Claimant D. D. DeHart, telegrapher, Tucson Division, was ordered by the Carrier to perform service and did perform service at East Yard, Tucson Division.

East Yard is located 4.7 miles east of Yuma by rail, 6 miles by automobile, the nearest point where living accommodations of any nature can be secured. No private dwellings, no lodgings of any kind and no eating establishments are located at East Yard. At some time in the past, Carrier erected and maintained living quarters at East Yard but these quarters lapsed into dilapidated condition, no windows, no doors and entirely uninhabitable. No means of transportation existed between East Yard and Yuma and Claimant was forced to use own automobile in making the round trip between East Yard and Yuma, a twelve mile trip daily.

Claimant submitted Form CS-148 covering the period, December 12, 1941 to December 31, 1941 inclusive, at a daily expense of \$1.00 for lodging and 60 cents for use of his privately owned automobile, totaling \$32.00 and payment was declined.

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 "G" are shown and made a part of this submission.

The claim is filed under Rule 37 (b), Telegraphers' Agreement, which we quote:

"RULE 37

Living Quarters, Etc.

(b) Where living quarters are furnished by the Company, water, fuel, and lights (except electric) will also be furnished, for all of which a reasonable charge will be made, except at isolated places where such facilities will be furnished without charge. Telegraphers will pay the cost of electric energy consumed in living quarters. Agent, first, second, third, and fourth trick telegraphers will have preference in occupying living quarters in the order named."

The petitioner's position in the instant case, namely, that while the claimant was working as extra second trick telegrapher at the East Yard telegraph office, he was entitled to living quarters or reimbursement in lieu thereof, is in fact a contention that all telegraphers are entitled to living quarters, or if not furnished, then reimbursement in lieu thereof. The carrier submits that the petitioner is fully aware of the fact that said position finds no support whatever in any rule of the current agreement.

There are numerous points on the carrier's line where no living quarters are furnished and numerous other points where living quarters are furnished for only a portion of the telegraphers assigned to said points. At the latter points, the quarters are occupied in accordance with the preference provided for in the last sentence of Rule 37 (b).

If the petitioner's position is correct, which it is not, then the carrier would be required or obligated to furnish living quarters at all points for all telegraphers assigned, or who may be assigned, to said points.

Since living quarters were first furnished at East Yard office, the petitioner has accepted the fact that said living quarters are available to but one telegrapher assigned to the East Yard office. To sustain the claim in this docket, the Division would in fact be recognizing the right of the claimant, an extra telegrapher, to said living quarters over the right of a regularly assigned telegrapher, namely, the third trick telegrapher; such recognition would be in direct opposition to the last sentence of Rule 37 (b).

The carrier submits that it had no agreement or other obligation to furnish living quarters for telegraphers assigned to the East Yard telegraph office; however, the carrier gratuitously made available living quarters for one telegrapher assigned to said office. Said living quarters were properly occupied by the regularly assigned third trick telegrapher while the claimant was assigned to the East Yard office as an extra second trick telegrapher from December 12, 1941 to January 24, 1942. The claimant had no right to said quarters, and likewise no right to be reimbursed for living quarters secured by him in Yuma while he was assigned as extra second trick telegrapher at the East Yard office.

While the matter of whether East Yard telegraph office is located at an isolated point is entirely immaterial to the instant case, the Division's attention is directed to the fact that the said office is located within the Yuma Yard limits and but 4.7 miles east of the city of Yuma. That fact completely establishes that said East Yard office is not located at an isolated point.

CONCLUSION

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

OPINION OF BOARD: In February 1925, the carrier established a telegraph office at East Yard which is 4.7 miles by rail and 6 miles by road from Yuma. Subsequently (it is not quite clear when) living quarters were built and maintained for three telegraphers. The office was closed in 1930 and reopened in 1936 with one telegrapher (third trick) assigned. In December 1941, assignments for second and third trick telegraphers were made.

Claimant was assigned to one of these tricks temporarily and worked from December 12, 1941 to January 24, 1942. His claim is for \$32.00 on account of expense incurred for lodging by reason of the carrier's failure to provide living quarters for him. The claim is predicated on Rule 37 (b) which provides:

"Where living quarters are furnished by the Company, water, fuel, and lights (except electric) will also be furnished, for all of which a reasonable charge will be made, except at isolated places where such facilities will be furnished without charge. Telegraphers will pay the

cost of electric energy consumed in living quarters. Agent, first, second, third, and fourth trick telegraphers will have preference in occupying living quarters in the order named."

While, in terms, the rule does not make it mandatory upon the carrier to furnish living quarters, its plain implication is that the carrier will do so "at isolated places."

The identical rule was under consideration by the United States Railroad Labor Board in Decision No. 3377. While the claim was denied it was stated in the decision:

"In the opinion of the Railroad Labor Board the provisions in regard to free living quarters at isolated points contained in the rule under which this claim is brought applies only at points where living quarters are not obtainable."

We think the carrier, in building living quarters at East Yard, recognized not only its obligation, under the rule, to provide living quarters "at isolated places" but, also, that East Yard was an isolated place. And, again it recognized its obligation and the fact of isolation by repairing and making habitable those quarters in 1942. There is nothing in the record to justify the conclusion that East Yard was any less remote in December 1941 than it was in February 1925. Indeed, it is clear from the record that Yuma is the closest point where living quarters may be had; and it is a fair inference that transportation facilities to and from that point were no different in 1941 than in 1925.

The claim includes an item of \$12.00 on account of cost incurred by claimant in operation of his automobile in going to and from Yuma. This much of the claim cannot be allowed because it does not come within the purview of Rule 37 (b).

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 in the amount of \$20.00.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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