

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

(Frank A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis-San Francisco Railway:

1. That the Carrier improperly denied Telegrapher B. M. Taylor free transportation by freight of his household goods, Tuttle, Oklahoma, to Cyril, Oklahoma, on March 9, 1943, when transferred "with authority of proper officials", as provided by Article VII-(1) of the prevailing Telegraphers' Agreement, from his headquarters station at Tuttle, Oklahoma, to the second trick telegrapher position at Cyril, Oklahoma, which had been awarded him by the Carrier as the senior, intelligent, courteous, capable and qualified applicant employe under said Agreement; and

2. That the Carrier shall be required to refund to the said Taylor the amount of \$24.72, which the Carrier improperly required the said Taylor to pay on April 5, 1943, for the transportation by freight of his household goods over the lines of the Carrier from Tuttle, Oklahoma, to Cyril, Oklahoma, on March 3, 1943, in disregard of its contractual obligation as contained and set forth in Article VII-(1) of the prevailing Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing an effective date of May 16, 1928, as to rules and working conditions is in effect between the parties. Article VII, Section 1, provides:

"When employes transfer with the authority of proper official they will receive free transportation for themselves, their families and household goods."

Mr. Ben M. Taylor, in whose behalf this claim is made, entered the service of the St. Louis-San Francisco Railway on July 26, 1942, as telegrapher, with headquarters at Tuttle, Oklahoma. On February 9, 1943, following a period of service as extra telegrapher, he was duly assigned, under the terms of the telegraphers' agreement, to the regular position of telegrapher at Cyril, Oklahoma.

On March 9, 1943, pursuant to the above rule, Taylor requested free transportation of his household goods from Tuttle, a railroad station of the Carrier, his former headquarters, to Cyril where he desired to establish his home and to which point he had been transferred by the authority of proper official, the Division Superintendent.

Authorization for such transportation was denied by the Carrier's superintendent, which resulted in Taylor being required to pay to the Carrier the sum of \$24.72 for the transportation of his household goods to the point of his new assignment.

of proper official, they will receive free transportation for themselves, their families and household goods. This means where an employe is working at one point and transfers to another point, he will be accorded the transportation mentioned.

"Taylor, according to my information, never worked for us at Tuttle, Oklahoma; therefore, he could not have been transferred in service from Tuttle to Cyril. The fact as I understand it is, he happened to be living at Tuttle when we first employed him, and did work as an extra telegrapher at two or three stations before being assigned a permanent position at Cyril. He is in exactly the same category as a man who might happen to be living at St. Louis when we hired him, worked extra a few days at Bristow, White Oak and Snyder, and then was assigned a permanent position at Cyril. Certainly he would not be entitled to deadhead billing on his household goods from St. Louis.

"Insofar as your request is concerned under the rule in the agreement it is definitely declined.

"As a matter of information to you, our Law Department says, since the move for which free billing is requested is wholly within Oklahoma, it would be controlled by the Oklahoma law, and, in their opinion, we could not lawfully issue this free billing for Mr. Taylor's household goods from Tuttle to Cyril."

Subsequently, Mr. C. V. High, Assistant General Chairman, and Mr. W. I. Christopher, General Chairman, contended this deadhead billing could be lawfully furnished. They referred to opinion of the General Counsel, Oklahoma Corporation Commission, and Section 22, Title 49, Interstate Commerce Act. Our General Attorney was acquainted with this information and advised this did not change his opinion of the law. The opinion of the General Attorney of the Corporation Commission is simply an opinion. The opinion of our General Attorney is based upon provisions of Section 13 of Article IX of the Oklahoma Constitution, which is the controlling law in this matter, and any interpretation would be one for the Courts to make. The Interstate Commerce Act is not controlling as this movement was intra-state in Oklahoma and the Oklahoma law would govern.

The General Chairman has referred to other instances where deadhead billing was furnished as an argument that it should be furnished in this instance. While we have in the past construed rule in Telegraphers' Schedule relating to free movement of household goods quite liberally, it is our contention that these other instances referred to were cases that were decided under the facts and circumstances applicable in those individual cases. They are not governing in this instance. The facts and circumstances in those instances were not the same as in this instance. First, because in none of them did they involve movement of household goods from the point where an employe resided at the time he entered the service and where he was never employed, to some other station, nor were any of these cases wholly intra-state within the State of Oklahoma.

It is our contention this claim should be denied. First, because it is not supported by governing rule in Telegraphers' Agreement, and second, because it could not lawfully be furnished. The Employes have agreed with us that the law takes precedence over agreement rule.

OPINION OF BOARD: Claimant entered the service of the Carrier as an extra telegrapher in July 1942. At that time he was residing at Tuttle, Oklahoma, and continued to reside there until he was assigned to a regular position at Cyril, Oklahoma, in February 1943. In the meantime he had been assigned to four temporary jobs, at different points, as an extra telegrapher. When he received the regular assignment he changed his residence—moving his household effects from Tuttle to Cyril over the Carrier's line. On account of the transportation of such effects the Carrier charged him \$24.72.

Claimant seeks recovery of that amount under Article VII, Section 1, of the Agreement which provides:

"When employes transfer with the authority of proper official they will receive free transportation for themselves, their families and household goods."

The Carrier resists the claim on two grounds: (1) That the rule contemplates free transportation of household effects only where the transfer is from one point of regular assignment to another; and (2) that under the constitution and laws of Oklahoma such transportation cannot be lawfully furnished inasmuch as Tuttle and Cyril are both situated in that state.

First: The rule certainly contains no such express limitation as the Carrier suggests; and, we think, to sustain the contention of the Carrier in this respect would amount to a modification or, rather, to an express limitation of the rule.

From July 1942 to February 1943 Claimant was on call as an extra telegrapher. Although he was never assigned for service at Tuttle his headquarters were there and it was at that point he received his calls on temporary jobs. We think that, in contemplation of the rule, when his status was changed from an extra to a permanent basis it amounted to a transfer from Tuttle, his headquarters as an extra, to Cyril, the location of his regular assignment.

Second: No statute nor constitutional provision has been made a part of the record which would render the rule nugatory under the facts presented. In any event, if there be such, it is a matter to be determined by the courts of Oklahoma.

Under the rule Claimant is entitled to recover the amount paid for the transportation of his household effects from Tuttle to Cyril.

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 parties waived oral hearing thereon;

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 20th day of January, 1947.