

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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. D. Bennett, Tucson Division, be reimbursed in the amount of \$1,609.50 account house rent and water purchased for domestic purposes, March 15th, 1942, through August 15th, 1945, while performing service at East Yard, Tucson Division, an isolated point.

EMPLOYES' STATEMENT OF FACTS: 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 conditions, no windows, no doors and entirely uninhabitable.

No means of transportation existed between East Yard and Yuma and Claimant was forced to use his own automobile in making the round trip between East Yard and Yuma, a twelve-mile trip daily.

The Carrier was informed of the fact that quarters were not available for telegraphers at East Yard as early as January 22nd, 1942, when claim was filed in behalf of D. D. DeHart. This is confirmed by Exhibit "N," which was shown as Exhibit "A" in Docket TE-2457, Award 2520 of the National Railroad Adjustment Board, Third Division.

The Carrier's attention was again called to their failure to comply with agreement provisions, September 23rd, 1943 (see Exhibit "A"), again on August 21st, 1944 (see Exhibit "C") and on October 27th, 1944 (see Exhibit "E").

On October 24th, 1944, Claimant Bennett presented the Carrier with bills and receipts covering rental and water purchased at Yuma, where he was forced to reside, and continued to furnish bills and receipts until August 15th, 1945, when the Carrier finally provided living quarters for all three telegraphers at East Yard.

POSITION OF EMPLOYES: Claim is presented under Rule 37 (b), Telegraphers' Agreement dated September 1st, 1927, which we quote:

"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

Although the claimant inferred in his above-quoted letter that his action in not requesting the quarters was influenced by a consideration for the greater needs of another telegrapher, the fact remains that even after living quarters were provided by the carrier for all telegraphers at East Yard, such quarters were never occupied by the claimant. It should likewise be noted that the above-quoted letter was written during the period for which claim is made.

The conclusion is inescapable that the claim in this docket is nothing more than an attempt to secure for the claimant payments to which he is not entitled on an agreement basis or any other basis.

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

All data herein submitted have been presented to the duly authorized representatives of the employees and are made a part of the particular question in dispute.

The carrier reserves the right if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

OPINION OF RECORD: During the period of this claim, there were three assigned telegraphers at East Yard, a telegraph station located 4.7 miles east of Yuma, Arizona, by rail. East Yard is an isolated place within the meaning of Rule 37 (b), which requires the Carrier to furnish living quarters for all three telegraphers. See Award 2520. Claimant was the regularly assigned second trick telegrapher at East Yard from March 15, 1942, to October 9, 1943, and thereafter occupied position of first trick telegrapher. Living quarters were not provided and this is a claim for house rent and water purchased throughout the period of the claim.

The Carrier contends that living quarters were available for one telegrapher at East Yard throughout the period of the claim and as Rule 37 (b) provides that agents, first, second, third and fourth trick telegraphers will have preference in occupying living quarters in the order named, that Claimant has no claim because of his failure to exercise his preference to the one available habitation.

There being three telegraphers assigned at East Yard, the Carrier was obligated to provide living quarters for all three, not just one. Claimant could waive his preference to the one without waiving his claim for the failure of the Carrier to comply with the Agreement. In fact, Claimant expressly preserved his right to living quarters at East Yard when he waived in favor of a telegrapher less able to commute between Yuma and East Yard. The Carrier is in no position to avoid its liability for failure to provide living quarters for three telegraphers because of a waiver of a mere preference by one of the three in favor of one of the others. A preference is a privilege having no mandatory attributes and may ordinarily be waived without prejudice to existing rights. An affirmative award is required.

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 employees involved in this dispute are respectively carrier and employees 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 as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.