

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 Mr. H. A. Johnson, regular assigned agent-telegrapher at Pinole, California, Western Division, be reimbursed to the extent of \$200.00 for rental paid May 24 to November 10, inclusive, 1945, account not being permitted to occupy living quarters, and said quarters not being in a habitable, sanitary condition, Agent Johnson being entitled to these quarters under the Telegraphers' Agreement, due to his being regularly assigned at Pinole, California.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employees, represented by the petitioner, bearing an effective date of December 1, 1944 (hereinafter referred to as the current agreement), a copy of which is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains a station at Pinole, California (a town of approximately 1,400 population) located on the carrier's Western Division.

3. Residential quarters, consisting of four rooms, are contained on the second floor of the station building at Pinole. Prior to the year 1935, those quarters were occupied by incumbents of the position of agent-telegrapher at a rental charge of \$4.00 per month. Commencing with the year 1935, and continuing until May 19, 1945, the incumbents of said position elected to reside elsewhere, consequently, the quarters were leased to other employees of the carrier.

4. A vacancy on position of agent-telegrapher at Pinole was advertised for seniority application on Telegrapher Circular No. 833, dated May 3, 1945; the closing date for receipt of applications therefor being May 13, 1945. H. A. Johnson (hereinafter referred to as the claimant), being the senior qualified applicant, was on May 23, 1945, awarded said position and commenced service thereon May 25, 1945.

5. The claimant, having determined that he was the senior qualified applicant for the advertised position of agent-telegrapher at Pinole, addressed a letter on May 19, 1945, to the division superintendent requesting that he be permitted, concurrent with his assignment to said position, to occupy the residential quarters in the station building at that point. The division

despite the fact that they had been inhabited by another employe and his family for a considerable period prior thereto. While it was the opinion of the carrier's division officers that the quarters were in a habitable and sanitary condition, nevertheless, in deference to the claimant's request, certain repairs and improvements were made by the carrier and thereafter, on November 10, 1945, they were again made available to the claimant at a rental charge of \$4.00 per month.

Regardless of the foregoing facts, which conclusively establish that no basis or obligation exists under the provisions of the current agreement for furnishing any living quarters to the claimant, the petitioner now endeavors, by means of this submission, to penalize the carrier to the extent of obtaining a reimbursement of rent allegedly paid by the claimant, not only during the period that the residential quarters at Pinole were occupied by another employe, i. e., from May 24 to August 11, 1945, but likewise during the period from August 11 to November 10, 1945 that the carrier undertook to make repairs and improvements to the quarters at the claimant's request.

The petitioner and its representatives are fully aware of the fact that when the current agreement was executed, the only obligation upon the carrier insofar as the furnishing of living quarters is concerned, was set forth in Section (a), paragraphs 1 and 2 of Rule 37; and is likewise fully aware of the fact that the claimant did not have a right under the aforementioned paragraphs to demand as an agreement requirement, that he be furnished living quarters at Pinole. In the light of these facts it should be obvious that what the petitioner is actually trying to accomplish is to extend upon the provisions of Rule 37; and, therefore, a sustaining award in this docket would in fact constitute writing into said rule a provision that does not exist and which was not agreed to between the parties; in other words, a provision that would in effect require the carrier to either furnish living quarters, or pay expenses incurred for rental of such quarters, to employes covered by the current agreement, whenever request was made therefor. That this Division has the authority to construe and enforce agreements but not to make new rules or amend existing rules is a well established principle.

It will be noted that the claim submitted in this docket requests reimbursement to the claimant for rental allegedly paid for the period May 24 to November 10, inclusive, 1945. In this connection attention is invited to Section (b), paragraph 1, Rule 28 of the current agreement, which is as follows:

"A claim for compensation on any account must be presented in writing within ninety (90) days from the date of the occurrence to which the claim relates; otherwise, said claim shall be deemed to have been abandoned. A claim based upon a series of similar or continuing occurrences may be presented at any time, but shall not relate to any occurrence more than ninety (90) days prior to the date of presentation."

The first occasion that the claimant presented a claim for expenses based upon the fact that living quarters had not been furnished by the carrier, was by letter dated August 30, 1945 (Carrier's Exhibit B); therefore, in view of the explicit provisions of the above-quoted rule, even though the claim were otherwise valid—which the carrier does not concede but expressly denies—there would still be no valid basis for any payment during the period May 24 to 31, inclusive, for the reason that such period was in excess of 90 days prior to the date the claim was submitted to the division superintendent by the claimant.

The carrier submits that it has established that the claim in this docket is not supported by Rule 37, or any other rule of the current agreement; therefore, being without agreement basis, it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The General Committee of The Order of Railroad Telegraphers makes this claim on behalf of H. A. Johnson, the regularly

assigned Agent-Telegrapher at Pinole, California, for hotel room rentals he paid in the sum of \$200.00 during the period from May 24 to November 10, 1945, inclusive. The basis for the claim is that Claimant could not and was not permitted to occupy the living quarters at Pinole, which he claims he was entitled to under the Telegraphers' Agreement as the occupant of the position of Agent-Telegrapher, and, because thereof, had to expend that amount for lodging during that period.

The record discloses that a vacancy occurred on the position of Agent-Telegrapher at Pinole. This vacancy was bulletined on May 3, 1945. Claimant applied therefor and, on May 23, 1945, was awarded the position and placed thereon on May 25, 1945. There are residential quarters, consisting of four rooms, on the second floor of the station building at Pinole. Anticipating he would be awarded the position Claimant, on May 19, 1945, notified the Superintendent that he wanted to occupy these quarters.

Prior to March 16, 1922 these quarters had been furnished rent free. However, on and after that date a monthly rental charge of \$4.00 was made for the use thereof. Up until 1935 these quarters were occupied by the Agent-Telegrapher at Pinole. However, commencing with that year they were rented to other employees of the Carrier and, at the time Claimant notified the Superintendent that he wanted to use them, they were being occupied by a signalman who was paying rent at the rate of \$4.00 per month for the use thereof.

The Superintendent, upon being advised by Claimant that he desired the use of these quarters, notified the occupant thereof that he would have to vacate. However, due to a shortage of housing facilities, he was not able to do so until August 11, 1945. When vacated Claimant notified Carrier they were not in a habitable condition. Carrier thereupon caused some repairs to be made and decorating to be done. This further delayed Claimant occupying these quarters until November 10, 1945. Since the occupancy thereof Claimant has paid the rental charge of \$4.00 per month. The hotel rentals, for which claim is here made, were incurred by Claimant after being placed on the job and before these quarters were made available to him on November 10, 1945.

Rule 37, as far as here material, provides:

"Section (a). 1. At stations where living quarters, either in station buildings, cars or separate buildings, together with allowances of fuel, ice and other supplies have heretofore been furnished employees without expense to themselves, such concessions shall not be withdrawn by the Carrier, after the adoption of this agreement.

2. Where living quarters cannot be secured at isolated points, the Carrier shall provide suitable quarters without charge for each employee, and in addition furnish fuel, ice and water free of charge.

Section (b). Agents, and employees assigned to first, second, third, fourth positions, and so on shall have preference in occupying living quarters in the order named.

Section (c). The Carrier shall maintain any living quarters that it furnishes in a habitable and sanitary condition; employees shall cooperate in keeping same clean and orderly. Insanitary conditions at a station shall be corrected upon being reported to the proper officer of the Carrier."

If, on May 25, 1945, Carrier was required to furnish employees at Pinole living quarters without charge under Rule 37, Section (a) 2 because Pinole was an isolated point, or, if it was required to continue to furnish living quarters at that point under Rule 37, Section (a) 1 because it had been furnishing it at that point free of expense, or, if Carrier of its own accord was furnishing living quarters at that point then, under Rule 37, Section (b), Claimant was entitled thereto for he had preference rights

under that rule and Carrier, under Rule 37, Section (c), would have been required to maintain such quarters in a habitable and sanitary condition.

The facts disclose that Pinole is not an "isolated point" within the meaning of Rule 37, Section (a) 2. Consequently Awards 2520, 3529 and 3533 of this Division, which involve this same Carrier, are not here pertinent for they are based on that fact. Neither was Carrier required to continue to furnish living quarters at Pinole under Rule 37, Section (a) 1 because it had not been furnishing it at that point "without expense" when the current Agreement of these parties became effective. In fact, Carrier had been charging for the living quarters at Pinole since March 16, 1922.

When Carrier is furnishing quarters at a station that cannot be said to be "isolated" and is making a charge therefor it is not contractually obligated to continue to do so under Rule 37, Section (a) 1 or 2. Consequently, it cannot be held for damages because of its failure to furnish such quarters. Nor do we find that because Carrier sought to comply with Claimant's desire to occupy these quarters caused it to incur any liability. When it did so, and placed the Claimant in possession thereof on November 10, 1945, it only did what it had a right to do and caused no breach of its contractual obligations by not doing so sooner. Consequently, no liability was incurred by reason thereof.

We find Carrier has not violated the provisions of the parties' effective Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.