

Award No. 6739

Docket No. TE-6648

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Eastern Lines**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier is in violation of the Agreement between the parties when it required extra telegrapher D. C. Webb to travel from Perry, Oklahoma to Strohm, Oklahoma on January 7, 1952, and return to his home point on January 15, 1952, and refused and continues to refuse to compensate him for deadhead travel time from Perry to Strohm, Oklahoma, and return to his home point; and

2. The Carrier shall now be required to pay claimant D. C. Webb for round trip deadhead travel time based on the railway mileage shown in its time table.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of June 1, 1951, between the parties to this dispute is in evidence.

J. K. Patterson, Agent-Telegrapher, Strohm, Oklahoma, was absent from duty December 28, 1951 through January 15, 1952, account scheduled vacation. Extra Operator J. W. McKee was sent to Strohm December 28, 1951, to provide vacation relief on Mr. Patterson's position for which no deadhead pay was claimed. Extra Operator McKee resigned while performing the vacation relief work at Strohm, and requested that he be relieved January 4, 1952, or as soon thereafter as possible. Extra telegrapher D. C. Webb, whose home point is Perry, Oklahoma, became available and was sent to Strohm on January 7, 1952, to relieve McKee, who had resigned. Webb continued to fill the vacancy caused by McKee's resignation up to and including January 15, 1952, when he was released by the return of the regular occupant (Patterson) of the position, and returned to his home point at Perry, Oklahoma.

12(b) of the Vacation Agreement. If we apply to these facts the contention of the Petitioner, namely, that a vacancy existed in the position which must be filled under Rule 17 of the current Agreement, we would be compelled to ignore the applicable provisions of the Vacation Agreement. This is not the case of a conflict between existing rules. **The Vacation Agreement, by its terms, has defined a vacation absence as not a vacancy under any agreement, and to that extent has limited the application of Rule 17.**" (Emphasis added.)

See also Third Division Awards 5461 and 5976.

As shown hereinabove, the claimant Webb in this dispute was **not** sent to Strohm to protect a vacancy in the position of agent-telegrapher, but instead was sent there to provide vacation relief for the agent-telegrapher, whose absence in the premises, being specifically defined in Article 12(b) of the Vacation Agreement as **not constituting a vacancy under any agreement**, as moreover affirmed in awards of the Third Division, N. R. A. B. It was not a vacancy when McKee commenced relieving agent-telegrapher Patterson beginning December 28, 1951, and obviously could not have, and did not become one on January 7, 1952, merely because telegrapher McKee resigned from the service, necessitating a change of personnel in relief telegraphers, Patterson having continued on vacation during all of the time Webb relieved him.

In conclusion, the Carrier reiterates that the claimant extra telegrapher D. C. Webb was used only for the purpose of performing vacation relief in place of Patterson, and Article X, Section 3-c specifically provides that no deadheading will be paid for under such circumstances. There is unquestionably no schedule support or merit to the instant claim of the Employees, and the Carrier respectfully requests that the Board deny the claim in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and arguments as it may conclude are required in reply to the Organization's ex parte submission or any subsequent oral argument or briefs presented by the Organization in this dispute.

All that is herein contained has been both known and available to the Employees or their representatives.

OPINION OF BOARD: From December 28, 1951, to and including January 15, 1952, Telegrapher Patterson at Strohm, Oklahoma, was absent on his annual vacation. Carrier sent extra employee McKee from Oklahoma City to Strohm to provide relief for Patterson's position. On December 31, McKee resigned from the service and on January 7 Claimant Webb was sent from Perry, his home station, to Strohm, a distance of 102.4 miles, to replace McKee. Webb provided relief at Strohm from January 7 until Patterson returned on the 15th.

Article X, Section 3-a provides, generally, that extra employees will be paid deadhead travel time, but Section 3-c thereof says: "No deadheading will be paid for in connection with vacation . . . relief."

Claimant asks that he be compensated for round-trip deadhead travel time between Perry and Strohm, claiming that he was sent to relieve McKee and not in connection with vacation relief. It is conceded that McKee was not entitled to and did not claim compensation for deadheading between Oklahoma City and Strohm.

To sustain Claimant's contention would do violence to the clear meaning and import of Rule X, 3-c. Webb was sent to Strohm to provide relief for Patterson, who was on vacation, as much as was McKee. Certainly, it cannot be said that Webb's travels to and from Strohm was not connected

with vacation relief. If there had not been a need for vacation relief at Strohm, there would have been no occasion to send either McKee or Webb to that point. The fact that McKee resigned did not change the picture. When the purpose, intent and meaning is as clear as is Article X, 3-c, in its application to the undisputed facts of this case, there is no need for resorting to legalistic theories in a search for fine distinctions. The Claim is without merit.

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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1954.