

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, 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:

1. Carrier violated the provisions of the agreement between the parties when it failed to make free living quarters available to C. A. Kump, extra telegrapher, Salt Lake Division, when he was required to relieve regular assigned second shift telegrapher-clerk J. E. Ydiando at Likely, California, May 26 to June 6, 1954, inclusive.

2. As a result of the violation, the carrier shall compensate claimant C. A. Kump in the amount of \$24.00 for room rent and \$42.40 for meals, a total of \$66.40 for expenses incurred during the period involved in this claim.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). A copy of this agreement is on file with the Third Division and is hereby made a part of this dispute as set out herein word for word.

Likely, California, is an isolated point located at Milepost 438.7 on the Alturas Subdivision of the Salt Lake Division of the Carrier. At the time of this claim there were three telegraph service positions at this station. The Agent-telegrapher was assigned hours 8:00 a.m. to 4:00 p.m.; the second shift Telegrapher-clerk—4:00 p.m. to 12:00 midnight; and, the third shift—12:01 a.m. to 8:00 a.m. All of these employees are furnished living quarters free of charge by the Carrier under the terms of the Telegraphers' Agreement.

In this instant claim we are particularly concerned with the living quarters required to be provided by the Carrier for the occupant of the second shift Telegrapher-clerk position at Likely. The records show that both prior and subsequent to the Telegraphers' Agreement effective December 1, 1944, referred to above, the Carrier furnished a converted freight box car body as

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

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 37(a) (2) of the Agreement between the parties provides:

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

In accordance with this Rule, Carrier maintains living quarters at Likely, California, for the regularly assigned second telegrapher-clerk, among others. Claimant was assigned to relieve on this position while the incumbent took her vacation. This assignment was made by telegram, copies of which were sent to both Claimant and the incumbent, and included the following language:

"C Kump report to Likely 4 PM May 26 relieving 2nd Telegr Ydiando for vacation May 26 to June 6 incl. Housing for 2nd Telegr Likely will be occupied by Telegr Kump while position filled by him unless other mutual satisfactory arrangements made between Ydiando and Kump."

Both Kump and Ydiando acknowledged receipt of this message; however, upon arrival at Likely, Kump found that Ydiando had not vacated the quarters but proposed to live in them during her vacation. He thereupon found lodging in a hotel at a cost of \$24.00 for the two-week period. The claim is for this amount plus \$42.40 expended for meals.

Claimant contends that the rule requires the Carrier to furnish free quarters to each employe at Likely, that Ydiando still held her assignment at Likely during her vacation at the same time as Claimant was assigned there to relieve her, and that therefore the Carrier was obligated by the rule to furnish free quarters to each of them. In support of this contention, an instance is cited where Carrier paid the rental expense of an extra telegrapher who relieved the regularly assigned agent-telegrapher at San Ardo, California. In that case, the regular employe was in the hospital and his wife was occupying the quarters provided by the Carrier.

Carrier argues that the rule requires only that the employe actually working the position involved be furnished quarters, and states that the practice on the property has been for the employe being relieved to turn over the living quarters to the relief employe unless other arrangements are made by the employes themselves without expense to the Carrier. As to the example cited by Claimant, Carrier explains that payment was made because it did not appear that Carrier had taken any action to see that the quarters were vacated for the relief employe. In the present case, Carrier argues, such action was taken by means of the telegram quoted above.

The rule is not explicit as to whether quarters different from and in addition to those furnished to regular employes must be furnished to relief employes; resort must therefore be had to the practice of the parties under the rule. Although the problem of vacation relief at Likely must have arisen

many times under the present rules, both parties have refrained from informing the Board what procedure has been followed there in the past with regard to living quarters. In the absence of this primarily relevant information, we must look to the only evidence of past practice in the record, the incident at San Ardo. From the written record of that case which is supplied to us—a letter dated March 4, 1952 from the General Chairman to the Assistant Manager of Personnel, it appears that the parties were in agreement at that time as to the meaning of the rule. Thus, the Carrier's Superintendent wrote:

"When an unassigned relief agent or telegrapher relieves a regular employe at a station who has assigned living quarters, regular employe will give such living quarters to the unassigned relief employe while he is performing relief at that station."

Similarly, the General Chairman wrote:

"Free quarters such as are provided at San Ardo are part of the compensation of the position and the Agent on leave of absence has no right to retain the quarters and the only one who could require the former Agent to vacate the quarters was the Division Superintendent or one of his staff."

It can be seen that the parties agreed that the regular employe had no right to the use of the quarters as against his relief employe during the period of his relief, and that it was the obligation of the Carrier to get the quarters vacated. It was because of its failure to get the quarters vacated, Carrier asserts, that it paid the claim.

Applying this agreed-upon interpretation to the present case, we feel that the claim as to lodging expenses should be sustained. Carrier did not fulfill its obligation under the rule to provide suitable quarters for Claimant by notifying Ydiando to vacate but not following through to see that she complied or made other satisfactory arrangements for Claimant.

The responsibility is on the Carrier to provide the quarters, and something more than the mere notice given in this case is necessary in order for Carrier to comply with the rule.

There is no support in the Agreement for the claim for reimbursement of money spent for meals; accordingly, that part of the claim will be denied.

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

That the parties waived hearing on this dispute; and

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained in part and denied in part in accordance with Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.