

Award No. 10893
Docket No. TE-9592

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Ann Arbor Railroad, that:

1. The Carrier violated the Agreement between the parties hereto when it failed and refused to compensate Extra Telegrapher W. E. Linna the deadhead allowance due him in accordance with the provisions of Rule 12 of the Agreement.

2. The Carrier shall now compensate Claimant Linna the deadhead allowances set forth below:

(a) 9 hours, 5 minutes deadhead allowance Toledo, Ohio to Elsie, Michigan, November 30, 1955.

(b) 8 hours, 54 minutes deadhead allowance Elsie, Michigan to Toledo, Ohio, December 1, 1955.

(c) 9 hours, 46 minutes deadhead allowance Toledo, Ohio to Elsie, Michigan, December 4, 1955.

(d) 6 hours, 55 minutes deadhead allowance Elsie, Michigan to Temperance, Michigan, December 5, 1955.

(e) 9 hours, 50 minutes deadhead allowance Temperance, Michigan to Elsie, Michigan, December 23, 1955.

Less the following deadhead allowances paid him:

(1) Deadhead allowance of three hours Toledo to Temperance, December 5, 1955.

(2) Deadhead allowance of 9 hours, 45 minutes from Temperance to Elsie, Michigan on December 23, 1955.

"Less the following deadhead allowances paid him:

* * *

(2) Deadhead allowance of 9 hours, 45 minutes from Temperance to Elsie, Michigan on December 23, 1955."

A time report was submitted in favor of Extra Telegrapher Linna presenting claim for 9 hours and 45 minutes allowance for the deadhead trip he made from Temperance, Michigan to Elsie, Michigan, December 23, 1955. On that time report it was indicated that the time claimed was from 11:45 P. M. to 9:30 A. M., or 9 hours and 45 minutes. As Train TF-3 was by Temperance, Michigan at 11:45 P. M., December 23, 1955 and was by Elsie, Michigan at 9:30 A. M. December 24, 1955, the carrier allowed the claim of Mr. Linna for a deadhead allowance of 9 hours and 45 minutes, as was claimed.

The carrier is unaware of the basis for the additional 5 minutes allowance claimed by the Committee over and above that claimed on the time report submitted in favor of Extra Telegrapher Linna for the deadhead trip from Temperance, Michigan to Elsie, Michigan on December 23, 1955 and is also unaware of there actually being a dispute in that regard. An examination of the correspondence directed to the Carrier (included in Carrier's Exhibit "A" attached to this submission) does not reveal the basis for the claim of an additional 5 minutes deadhead allowance nor has the carrier been otherwise informed thereof.

The petitioner is attempting through the medium of an award by this Division to enlarge upon the provisions of Rule 12 of the Telegraphers' Agreement to provide for deadhead allowances for all trips made by employees included within the Scope of that Agreement, regardless of whether or not the Carrier orders the Employees to deadhead, and thereby obtain a new rule without necessary resort to the proper procedure as provided for and required by the Railway Labor Act.

The National Railroad Adjustment Board, Third Division, is without jurisdiction to amend, promulgate or grant rules, and the contention of the Committee should be dismissed and the claim denied.

The Carrier affirmatively states that the substance of all matter referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim stems from Carrier's refusal to compensate Extra Telegrapher W. E. Linna the deadhead allowance set forth in the Statement of Claim, supra, in accordance with the provisions of Rule 12 of the Agreement.

There is in evidence and Agreement between the parties to this dispute effective September 1, 1955 as revised.

Mr. Linna is an extra telegrapher with headquarters at Elsie, Michigan, where he resides. Elsie is located about midway between the two land termini of the Ann Arbor Railroad in Michigan. Thus the Petitioner is readily available to perform extra relief service on any part of the railroad with a minimum of deadhead time.

On or about November 25, 1955, he was ordered by the Carrier to protect a vacation vacancy on the third shift Telegrapher-Leverman's position at Bou-

levard Interlocker, Toledo, Ohio, commencing at 11:59 P. M. Friday, November 25, 1955. The position is assigned 11:59 P. M. to 7:59 A. M., with a workweek of Friday through Tuesday, rest days, Wednesday and Thursday.

He worked the five workdays of the position, Friday, November 25th through Tuesday, November 29th. He then was entitled to the rest days of the position, which were Wednesday, November 30th, and Thursday, December 1st. The rest days of the position are assigned to a relief Employee. Thus, in the absence of any vacancy on the rest days of the position, the Petitioner had completed the assignment to which ordered by the Carrier. However, instead of being permitted to take the two rest days of the position, Claimant Linna was ordered to fill a temporary vacancy on the first shift Telegrapher-Leverman's position at Boulevard Interlocker, Toledo, Ohio, commencing 7:59 A. M. on Thursday, December 1st. The assigned hours of this position are 7:59 A. M. to 3:59 P. M., workweek Monday through Friday, Saturday and Sunday rest days. The Petitioner worked this position Thursday, December 1st, (the second rest day of the previous assignment) and Friday, December 2nd.

Claimant Linna also performed extra relief service on the two rest days of the first shift Telegrapher-Leverman's position in the absence of the regularly assigned relief Employee, i.e., Saturday, December 3rd and Sunday, December 4th.

With the completion of the work on the first shift at Boulevard Interlocker at 3:59 P. M., Claimant was ordered to fill a temporary vacancy on the Agent's position at Temperance, Michigan, commencing Monday, December 5th. The assigned hours of the position are 7:45 A. M. to 4:45 P. M., one-hour lunch period, workweek Monday through Friday, Saturday and Sunday rest days. He remained on the position December 5th through 23, 1955.

Mr. Linna was paid a deadhead allowance of three hours, Toledo to Temperance, December 5, 1955. He was also paid a deadhead allowance for the time going from Temperance, Michigan, to Elsie, Michigan, on December 23, 1955, of 9 hours and 45 minutes.

The Petitioner claims violation of Rule 12 of the aforementioned Agreement which is in words and figures as follows:

"RULE 12

"DEADHEADING

"Employees deadheading by order of the Company will be allowed one dollar sixty-six and one-half cents (\$1.66½) per hour for time required by train to make the deadhead trip and return to their headquarters with a minimum of three (3) hours for each trip.

(NOTE: This rule not to apply when allowances are made under Rule 15 or 19.)"

The exception to Rule 12 above quoted has no bearing on the issue now before the Board.

Our study of this record discloses that the Claimant had but 24 hours off duty between service on the third and first trick vacancies at Toledo and but 15 hours 46 minutes off duty between the second Toledo vacancy and commencement of Temperance vacancy. Toledo is approximately 120 miles east of Elsie. Temperance is approximately 9 miles east of Toledo, and approximately 111 miles east of Elsie. This Board held in Award No. 8571 that deadhead service, per se, is travel, at the direction of the Carrier, either to a point where service is to commence, or from a point where service has terminated,

back to the Employee's home station. It is travel to or from regular or extra service which is essential.

We find the provisions of Rule 12 above noted to be clear, distinct, explicit and unambiguous, consequently this Board is without authority to modify, change, add to or subtract from the provisions thereof since the authority of this Division is limited to interpretation and applying the rules agreed upon by the parties.

Regardless of potential inequities among Employees arising by reason of any rule, this Division is without authority to make any change therein as it has not been given equity powers. See Awards 3439, 5864, 2491, 6113, et al, of this Division.

We are not of the opinion that the decision of the Supreme Court of the United States in the case of Steel Workers vs. Enterprise, reported in 363 U. S. page 593, cited by Petitioner has any bearing with respect to the authority vested in this Board. From a careful study of this record we find the facts clearly distinguishable from those contained in awards cited by Petitioner, and although we do not find any previous award on "all fours" with the facts in this case we do find the same principle involved in Award No. 4366, (Elkouri, Referee).

From this record and from the particular facts in this case, we necessarily find the claim to be without merit, in view of the clear and unambiguous provisions of Rule 12. It will be noted that Rule 12 provides that deadheading payments will be made for deadheading by order of the Company. There is nothing in the rule providing that an Employee will be paid deadheading to and from his headquarters between consecutive vacancies, at the same distant location or point immediately adjacent thereto, or if such deadheading is done strictly at the Employee's own volition.

To hold otherwise would constitute a redrafting of the Agreement and encroachment into the field of Collective Bargaining which rightfully belongs exclusively to the parties.

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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November 1962.