

Award No. 13132
Docket No. TE-11382

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

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

Claim No. 1

1. The Carrier violated the parties' Agreement when it failed and refused to compensate Extra Telegrapher B. F. Sunderland for the time required to return to his headquarters when ordered to deadhead by the Company.

2. The Carrier shall now compensate Extra Telegrapher Sunderland the deadhead allowances set forth below:

(a) Three (3) hours deadhead allowance Moberly to Brunswick, November 16, 1958.

(b) Three (3) hours deadhead allowance Brunswick to Moberly, November 18, 1958.

(c) Three (3) hours deadhead allowance Moberly to Gallatin, November 18, 1958.

(d) Three (3) hours deadhead allowance Gallatin to Moberly, November 19, 1958.

(e) Four (4) hours and seven (7) minutes deadhead allowance Moberly to Stanberry, November 19, 1958.

(f) Three (3) hours and forty-five minutes deadhead allowance Stanberry to Moberly, November 20, 1958.

Less the following deadhead allowances paid him:

(1) Three (3) hours deadhead allowance Moberly to Brunswick, November 16, 1958.

(2) Three (3) hours deadhead allowance Brunswick to Gallatin, November 18, 1958.

(3) Three (3) hours deadhead allowance Gallatin to Stanberry, November 19, 1958.

(4) Three (3) hours, forty-five (45) minutes deadhead allowance Stanberry to Moberly, November 20, 1958.

Or the difference between 12 hours and 45 minutes deadhead allowance at \$2.18 per hour or \$27.51 paid, and 19 hours and 52 minutes at \$2.18 per hour or \$42.99 due him, leaving a net deficit of \$15.48, the amount claimed.

Claim No. 2

1. The Carrier violated the parties' Agreement when it failed and refused to compensate Extra Telegrapher B. F. Sunderland for the time required to return to his headquarters when ordered to deadhead by the Company.

2. The Carrier shall now compensate Extra Telegrapher Sunderland deadhead allowances set forth below:

(a) Three (3) hours deadhead allowance Moberly to Brunswick, November 23, 1958.

(b) Three (3) hours deadhead allowance Brunswick to Moberly, November 25, 1958.

(c) Three (3) hours deadhead allowance Moberly to Gallatin, November 25, 1958.

(d) Three (3) hours deadhead allowance Gallatin to Moberly, November 26, 1958.

Less the following deadhead allowances paid him:

(1) Three (3) hours deadhead allowance Moberly to Brunswick, November 23, 1958.

(2) Three (3) hours deadhead allowance Brunswick to Gallatin, November 25, 1958.

(3) Three (3) hours deadhead allowance Gallatin to Moberly, November 26, 1958.

Or the difference between nine (9) hours at 2.18 per hour \$19.62 paid, and twelve (12) hours at \$2.18 per hour or \$26.16 due him, a net deficit of \$6.34 claimed.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between the parties to this dispute effective September 1, 1955, and as amended.

CLAIM NO. 1

B. F. Sunderland, claimant in this dispute, is an extra telegrapher assigned to the Moberly Division. His assigned headquarter's station is Moberly, Missouri.

On or about November 16, 1958, the Carrier ordered the Claimant to protect the following temporary assignments:

As Rule 9, paragraph (b) of the telegraphers' agreement has continued unchanged, except for rate of pay, since December 1, 1922, the practice of the parties throughout the years as indicated in Carrier's Exhibits "C" to "H", inclusive, affords conclusive evidence that it was not the intent of the parties to provide compensation for deadheading as here claimed. In that connection, attention is directed to Award No. 4366 of this Division in a somewhat similar dispute, wherein it was held:

"The provisions of Rule 23(a) have continued unchanged (except for the rate of pay) for many years; the practice of the parties under the rule affords a guide in determining what the parties had in mind when the rule was written. See Awards 3727, 2436, 2326, 1397, 887 and 213."

Attention of this Division is again directed to the fact that the agreements with the telegraphers' organization effective January 1, 1924; January 1, 1925; January 1, 1926; October 16, 1927; November 1, 1946; and September 1, 1955, contain the same Rule 9, paragraph (b) as incorporated in the Telegraphers' Schedule effective December 1, 1922 (except for rate of pay), and that those agreements (including the agreement herein involved effective September 1, 1955), did not change or abrogate the practice in the application of that rule by permitting extra telegraphers to deadhead to their headquarters following completion of work on every position on which their services were required or to make deadhead allowances to extra telegraphers covering deadhead trips back to their headquarters and from their headquarters to the location of the position they next work when moving from one vacancy or location to another on consecutive days. In that connection the statement of this Division in its Award No. 4791 is apropos:

" * * * it is also a well-established rule of contract construction that the re-adoption of a rule generally has the effect of re-adopting the mutual interpretation placed upon it by the parties themselves. In fact, it evidences an intent not to change the existing interpretations."

The Petitioner is attempting through the medium of an award by this Division to enlarge upon the provisions of Rule 9, paragraph (b) of the telegraphers' agreement to provide deadhead compensation for employees included within the scope of that agreement regardless of whether or not trips are by order of the company, or are in fact not made, and thereby obtain a new rule without necessary resort to the proper procedure 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 claims denied.

(Exhibits not reproduced).

OPINION OF BOARD: This claim involves an interpretation of the following rule, as applied to the facts in this case:

"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."

First let us state, that as a general rule, we believe that an order to perform work away from an employe's headquarters, implicitly contains an order to deadhead. As a general rule, this would mean, that the employe would deadhead both to his place of work and back to his headquarters.

This claim presents a slightly different situation than would normally be found in the usual deadhead cases. Here we have a Claimant who was ordered to protect assignments at various locations on consecutive days.

The Carrier paid Claimant for deadheading from his headquarters to his first assignment, then from that point to each succeeding place of work, and from his final assignment to his headquarters.

The Organization contends that Claimant should have been paid a deadhead allowance from his headquarters to each of his assignments, and from each assignment back to his headquarters. The claim before us then, is for the difference between what was actually paid, and that which is alleged to be the total due.

It is significant that the assignments which were made in this claim, were for work on consecutive days at various locations.

We are of the opinion that if the assignment was only to perform work at a single location, with no consecutive subsequent assignment, the employe would be entitled to a deadhead allowance both to the place of the work, and back to his headquarters. Likewise, if assignments were made which were non-consecutive, we are of the opinion that deadhead allowances would be proper from the place of the last consecutive assignment to the headquarters, in each series of assignments.

In this case, the assignments were consecutive, and we feel that a reasonably prudent person would say that the Carrier had compensated the employe properly. We do not believe that the rule involved, contemplates such payment as is claimed, under the facts present in this case.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement 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 11th day of December 1964.