

Award No. 13337
Docket No. TE-12558

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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:

1. The Carrier violated the provisions of Rule 9 (b) of the parties' Agreement when it failed and refused to compensate extra telegrapher L. E. Deierling for the time required to make the deadhead trip and return to headquarters at Brunswick, Missouri, from or to assignments at Moulton, Iowa, Montgomery and Moberly, Missouri, when ordered to deadhead by the company.

2. The Carrier shall, because of the violation set out in Item 1 of this statement of claim, compensate L. E. Deierling as follows:

Moulton, Iowa to Brunswick, Mo.
4/22/60 — 4 hours and 30 minutes

Brunswick, Mo. to Montgomery, Mo.
4/23/60 — 3 hours

Montgomery, Mo. to Brunswick, Mo.
4/23/60 — 3 hours

Brunswick, Mo. to Moberly, Mo.
4/24/60 — 3 hours

Moberly, Mo. to Brunswick, Mo.
4/24/60 — 3 hours

Less the deadhead allowance paid by the Carrier to the claimant.

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

L. E. Deierling, hereinafter referred to as claimant, was on the dates involved in this dispute an extra telegrapher assigned to the Telegraphers' extra board with headquarters at Brunswick, Missouri.

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 appropos:

“ * * * 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 employes included within the scope of that agreement regardless of whether or not such 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: The Claimant was headquartered at Brunswick. The Claimant, pursuant to his instructions, protected the agency at Moulton on April 21, 1960. The Claimant was in Moulton on the 21st and 22nd. The Carrier instructed the Claimant on the 21st while the Claimant was at Moulton to protect the agency in Montgomery on the 23rd and 24th. On the 23rd while the Claimant was working at Montgomery, he was instructed to protect the position at Moberly on the 24th.

The Carrier paid deadhead time from the headquarters at Brunswick to Moulton on the 20th, deadhead time from Moulton to Montgomery on the 23rd, deadhead time from Montgomery to Moberly on the 23rd and deadhead time from Moberly to Brunswick, the headquarters, on the 24th.

The Claimant contends he is entitled to the compensation set out in the statement of claim above, under the provisions of Rule 9 (b) of the Agreement of September 1, 1955.

Award 13132 has construed Rule 9 (b) as follows: An order to perform work away from the employe's headquarters implicitly contains an order to deadhead both to his place of work and back to his headquarters. However, where the assignments are consecutive, the employe is to be compensated only for deadheading from one assignment to the other and ultimately back to the headquarters.

We would state the rule as follows: Where a Claimant is instructed to protect a location, he is entitled to deadhead pay from his headquarters to the location he is instructed to protect. When his assignment is ended, he is entitled to deadhead pay from the position he is protecting to his new position, or, if there is no new position, to deadhead pay for his return to the headquarters.

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

That 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 26th day of February 1965.