

Award No. 16325
Docket No. TE-15436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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 Agreement between the parties when it failed and refused to properly compensate J. R. Johnson for deadheading from King City to Paso Robles, California on July 12, 1963.
2. Carrier shall compensate J. R. Johnson in the amount of two hours and 46 minutes' deadhead time on July 12, 1963, less amount already allowed for deadhead time on this date.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Operator J. R. Johnson, regularly assigned to a rest day relief position at King City, California, was instructed by the Carrier to protect the position of agent at Paso Robles, California, starting July 12, 1963. This placed him in the status of a regularly assigned employee required to perform relief work in accordance with Rule 9 of the Agreement which reads:

"Regular assigned employees shall not be required to perform relief work except in cases of emergency. When used to perform such service, they shall receive the regular rate of the position upon which relieving, but not less than the compensation they would have received on their regular assigned position. If any such employees would receive overtime rate through the application of Rule 7, on any day such service is performed the overtime rate shall apply on that day or days. In addition thereto, such employees shall be allowed actual necessary expenses while away from their regular assigned stations and paid the straight time rate of their regular

5. By letter dated October 8, 1963 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated March 18, 1964 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 9 states that Claimant was to be paid "for time used in traveling." "Used" refers, in participle form, to time, and time is modified by "in traveling" — "to and from, etc." The "straight time rate" is qualified in that Claimant was to be paid only for "actual" or real time "consumed." In other words, the rule restated is: Employees shall be paid for time used in traveling to and from the position relieved, the straight time rate of their regular assigned position based upon actual time consumed.

Then, in this case, the sole question is: How much actual time was consumed in traveling by Claimant?

The Record discloses that Carrier directed Claimant to take the train and the scheduled departure was 2:55 A.M. Claimant was at the depot at said time; however, the train was late, and did not leave until 4:31 A.M.

Obviously, the Claimant, though acting in accordance with the Carrier's direction, was not, between 2:55 A.M. and 4:31 A.M., the actual time of departure as hereinbefore noted, "traveling." He was waiting to depart—he was waiting to commence his journey.

This Board does not resolve the equities between the parties, but simply interprets the Agreement between the parties which they have made as a result of the collective bargaining process. Therefore, we must deny this claim.

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 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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.

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