

Award No. 16513
Docket No. TE-15508

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SOO LINE RAILROAD COMPANY

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

1. Carrier violated Agreement when it failed and refused to properly compensate R. J. Kolinski for deadheading on January 9, February 13 and 14, 1964.
2. Carrier shall compensate R. J. Kolinski in the amount of a minimum call payment on each date mentioned above.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At time of claim, R. J. Kolinski was an extra employe, relieving the position of fourth operator at Stevens Point, 12:01 A. M. to 8:00 A. M., with assigned rest days of Thursdays and Fridays. On or before Thursday, January 9 and February 13, 1964, Claimant was instructed by proper authority to deadhead from Stevens Point to Junction City, for the purpose of relieving the third operator at Junction City. Thursday, January 9th and February 13th and Friday, February 14th, were regularly assigned rest days of Claimant Kolinski and since he had not completed the extra assignment at Stevens Point, he was instructed by the Carrier to return to the latter station and continue working the fourth operator's position at Stevens Point, until further notice. He did as instructed.

The premise of the foregoing was embraced within the claim letters sent by General Chairman Feit, February 28 and March 28, 1964, to Mr. W. G. Anderson, Director of Personnel; the designated Carrier officer authorized to receive same. Copy of said letters and other correspondence exchanged between the parties in the further handling of the dispute on the property is reproduced and shown on the pages next following:

No settlement was reached and this is to reiterate that we do not agree with your contentions for denying the claims.

Yours truly,

/s/ Wm. F. Feit
Wm. F. Feit
General Chairman"

The foregoing documentation is evidence that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board but failed of settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant R. J. Kolinski was an extra telegrapher filling a temporary vacancy in the position of 4th Operator at Stevens Point, Wisconsin. This position was assigned to work 12:01 A. M. to 8:00 A. M., Saturday through Wednesday, with Thursday and Friday rest days.

On each of the dates involved in this dispute, temporary vacancies occurred at Junction City, Wisconsin, a distance of 11 miles from Stevens Point. Due to the shortage of extra telegraphers and the fact that Claimant Kolinski was on rest-day status, he was used to fill the Junction City vacancies on these dates.

In accordance with Rule 22(d) of the Telegraphers' Agreement, he was allowed 19 minutes deadhead travel time pay each way, each day, plus the standard mileage rate for using his own automobile. Inasmuch as the service rendered at Junction City was performed on his rest days, service thereat was compensated at the rate of time and one-half.

Copy of schedule agreement between the parties to this dispute, effective July 1, 1956, as amended to date, is on file with the Board and is made a part of this record by reference.

OPINION OF BOARD: The facts in this docket are not disputed. Claimant was an extra employe, relieving a position at Stevens Point with assigned rest days of Thursdays and Fridays. On 9 January and 13 February, 1964, Claimant did, pursuant to Carrier's instructions, deadhead from Stevens Point to Junction City for the purpose of relieving at Junction City. Both dates were his rest days and since he had not completed the extra assignment at Stevens Point, Claimant was instructed by Carrier to return to the latter station after each date and to there continue his work.

The dispute involves the interpretation of Rule 22, Relief Work-Deadheading, and more particularly parts (d) and the third paragraph of part (f) thereof. Same read as follows:

"(d) An extra telegrapher must complete an assignment, except as provided in Section (i) of this rule, before he is available for a new assignment except when extra or relief employes are required by the Company to leave their assigned position, to which their seniority entitles them, to fill other extra assignments and they will be paid the higher rate of the two positions involved, including deadhead travel

time as between the two points of service and actual necessary expenses when called away from their assigned location.

(f) * * *

Telegraphers required to deadhead or their rest day will be paid a minimum of a call of two hours at time and one-half at the highest hourly rate contained in their relief assignment." (Emphasis ours.)

Carrier sought to pay Claimant for deadheading under part (d) but the Organization contends that payment is due under the third paragraph of part (f), as above quoted.

A perusal of part (d) discloses that same is applicable to the instant situation. However, it does not provide a minimum for deadhead travel time while the third paragraph of part (f) provides such a minimum.

Carrier contends that the phrase ". . . in their relief assignment" makes the third paragraph of part (f) inapplicable and that same could only apply to "regularly assigned relief employees" and not to extras such as Claimant. In furtherance of this argument, Carrier points out at Record 29 that originally the paragraph began with "relief employees" instead of "telegraphers."

We cannot read part (f), paragraph 3, as Carrier suggests. Clearly, there having been a change made in the form of the paragraph the negotiators must have intended to alter the meaning—otherwise they would have made no change.

We hold that what was intended by the change was that all "employee telegraphers" be included. The phrase ". . . in their relief assignment" does not do damage to this holding for it simply indicates the practical conclusion of the mandates therein set out. Any telegrapher employee who is diverted on his rest day and thereby has to deadhead, would be, in effect, filling a "relief assignment." Therefore, paragraph three of part (f) is that portion of Rule 22 under which Claimant is entitled to an arbitrary payment for deadheading.

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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.

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