



Award No. 17073
Docket No. TE-15472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Telegraphers' Agreement when on the 4th day of December 1963 it required Telegrapher R. D. Strong, after completing vacation assignment, to be forced to return to home station and refused to allow deadhead time from Kingsville to Houston, Texas; also, on the 8th day of December 1963, Carrier refused to allow deadhead time from Houston to Kingsville, Texas to protect vacation assignment beginning December 9, 1963.

2. Carrier shall compensate Telegrapher R. D. Strong five (5) hours and fifty (50) minutes at the applicable rate at Kingsville for deadhead time from Kingsville to Houston, Texas on December 4, 1963; also, compensate Telegrapher R. D. Strong five (5) hours and fifty (50) minutes at the applicable rate at Kingsville for deadhead time from Houston to Kingsville, Texas on December 8, 1963 to protect vacation assignment beginning December 9, 1963.

Or, the alternative of:

3. Carrier compensating Telegrapher R. D. Strong at the rate of \$10.00 per day for room and board at Kingsville, Texas due to Carrier requiring Mr. Strong to remain at Kingsville during the period of December 4 through December 8, 1963 without compensation in order to protect a vacation assignment beginning on December 9, 1963, depriving Mr. Strong of his right to return to home station during the interim between two assignments.

EMPLOYEES' STATEMENT OF FACTS: Extra Telegrapher R. D. Strong was instructed by message dated November 18, 1963, as follows: Mr. R. D. Strong, please arrange to protect night chief's position "K" Office, Kingsville, 11:45 P. M., November 22 through December 3; also manager's position 7:45 A. M., December 9 through December 27, acknowledge. J. C. Morrow. See ORT Exhibit 1.

7 and 8. The vacation period of the two positions in 'K' Office at Kingsville were back-to-back except for the rest days intervening.

It is your position that Claimant is entitled to deadhead pay for returning to his home in Houston on the rest days of the positions on which he was relieving because the rest days were back-to-back. You attempted to treat the instructions as separate acts in order to support such a position.

The Claimant was instructed, November 18, 1963, to protect the Third Trick position and the Manager's position in 'K' Office at Kingsville. He is required to take the rest days of the positions, which he did, December 5, 6, 7, and 8, 1963; therefore, there is no support for the claim of deadhead from Kingsville to Houston and return to protect the Manager's position beginning December 9, 1963. There is no rule providing payment of expenses to extra telegraphers under the circumstances here present.

In view of the foregoing, claim is without rule support and is hereby declined.

Yours truly,

/s/ B. W. Smith"

In rejecting the decision of the Director of Labor Relations, under date of March 27, 1964, the Employees further stated:

"Telegrapher Strong completed an assignment on December 4, 1963, and was entitled to return to his home station and be compensated accordingly. By the same token he was entitled to compensation from home station to work another assignment. Even though the rest days of the positions might be back-to-back as you describe them the fact remains Telegrapher Strong had the prerogative to return to his home station and not remain at Kingsville and incur expenses in the amount of \$10.00 per day during this interim due to Carrier's lack of foresight in arranging their vacation forces accordingly."

The Carrier readily admits Claimant "had the prerogative" to return to his home at Houston on the rest days of the positions he was assigned to protect in order not to incur expenses by having to remain in Kingsville; however, the rule relied upon does not give him this prerogative at the expense of the Carrier. It is clear from the language contained in Rule 25(e) that deadhead will be allowed only for going to and from an assignment.

OPINION OF BOARD: R. D. Strong was used as an extra Telegrapher to relieve the occupants of the Night Chief and Manager positions in the Kingsville, Texas, Relay Office during their vacations. The third shift Night Chief assignment began at 11:45 P. M. on November 22, 1963, and extended through the December 3rd shift which terminated with the tour of duty concluding at 7:45 A. M., December 4, 1963. The first shift Manager position started at 7:45 A. M. on December 9, 1963 and extended through December 27, 1963. Mr. Strong was allowed compensation for deadhead time from his headquarters at Houston, Texas to Kingsville, Texas on November 22, and from Kingsville to Houston, December 27, 1963.

After filling the first vacation assignment, Mr. Strong traveled from Kingsville to his headquarters at Houston, and on December 8, he returned to Kingsville. He claims he is entitled to deadhead time for these two trips on the grounds that he covered two separate assignments. He cites Rule 25 (e) to support his argument. It is his position that when an assignment is finished, Carrier has an obligation to deadhead an employee back to his headquarters.

Carrier on the other hand claims there is no rule in the Agreement to support a claim for deadhead compensation when the trip is taken without its authority. It points out that Mr. Strong returned to Houston, his residence, for his own benefit and convenience during the rest days of the positions he worked, December 5, 6, 7 and 8. The two rest days of the second position worked, it states, were consecutive with the two rest days of the first position worked.

The message dated November 18 with instructions to Mr. Strong to protect vacation positions was a directive to cover two separate assignments at one office in Kingsville. The first assignment terminated at the end of his tour of duty 7:45 A. M. on December 4, and the second assignment did not begin until December 9 at 7:45 A. M. Claimant was not assigned to work the position on Saturday and Sunday, December 7 and 8, the rest days of the second assignment. December 5 and 6 can be accounted for as rest days for the first assignment and even if December 7 and 8 are considered as rest days for the second assignment, December 4 was not a rest day nor a day on which Claimant worked. Thus, there was an interval between the assignments and they cannot be considered as consecutive or back to back assignments.

For these reasons the claim for deadhead time from Kingsville to Houston and return to Kingsville is sustained.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1969.

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