



Award No. 18135
Docket No. TE-17305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Pacific Lines), that:

CLAIM NO. 1

CAR. FILE: Tel 61-229

COM. FILE: J.521.14 (S.A. 7)

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher B. T. Robbins for the week beginning Monday, September 25, 1961 and ending with Sunday, October 1, 1961 and for the week beginning Monday, October 2, 1961 and ending with Sunday, October 8, 1961 because of using deadhead allowance in computing his forty hour guarantee.

2. Carrier shall, because of the violation set forth above, compensate B. T. Robbins for six (6) hours and thirty-five (35) minutes at the minimum telegraphers' rate on the seniority district.

CLAIM NO. 2

CAR. FILE: Tel 61-215

COM. FILE: J.517.14

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher G. D. Bennett for the week beginning Monday, October 16, 1961, and ending with Sunday, October 22, 1961, because of using deadhead allowance in computing his forty hour guarantee.

2. Carrier shall, because of the violation set forth above, compensate G. D. Bennett for eight (8) hours at the minimum telegraphers' rate on the seniority district.

CLAIM NO. 3

CAR. FILE: Tel. 61-219
COM. FILE: A.442.3

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher C. T. Carter for the week beginning Monday, October 16, 1961 and ending with Sunday, October 22, 1961; Extra Telegrapher E. E. Kline for the week beginning Monday, January 1, 1962 and ending with Sunday, January 7, 1962; Extra Telegrapher E. E. Kline for the week beginning Monday, January 8, 1962, and ending with Sunday, January 14, 1962; and Extra Telegrapher G. R. Swanson for the week beginning Monday, January 1, 1962, and ending with Sunday, January 7, 1962 because of using deadhead allowance in computing the forty hour guarantee for extra employees.

2. (a) Carrier shall, because of the violation set forth above, compensate C. T. Carter for eight hours at the minimum telegraphers' rate on the seniority district for the week ending Sunday, October 22, 1961.
- (b) Carrier shall, because of the violation set forth above, compensate E. E. Kline for six hours and thirty minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 7, 1962.
- (c) Carrier shall because of the violation set forth above, compensate E. E. Kline for forty-five (45) minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 14, 1962.
- (d) Carrier shall, because of the violation set forth in paragraph 1 hereof, compensate G. R. Swanson for thirteen (13) hours and thirty (30) minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 7, 1962.

CLAIM NO. 4

CAR. FILE: Tel 61-234
COM. FILE: A.445.3

1. Carrier violated and continues to violate an Agreement between the parties hereto when it includes deadhead allowance in its computation of the guarantee of forty (40) hours a week for extra employees provided for in paragraph 7 of the October 29, 1961 Mediation Agreement.

2. Carrier shall be required to compensate each extra employee a minimum of forty (40) hours each week, Monday through Sunday, excluding allowances for deadheading, commencing Monday, September 18, 1961, and continuing thereafter until the violations are corrected.

3. Extra employees on the Portland Division as of September 18, 1961 were:

S. Diamond	W. W. Jensen
I. J. Frininger	C. T. Carter
L. F. Gallegos	E. E. Kline
C. L. Wise	R. E. Buike
J. E. Girard	T. I. Patterson
G. R. Swanson	A. C. Quinelle
B. J. Darby	G. N. Lindbeck
F. M. Sweet	T. B. Wong
R. J. Gordon	W. D. Holsheimer
I. E. Green	E. W. McArdle

4. In addition to the extra employees shown above, the Carrier shall compensate each extra employe a minimum of forty (40) hours each week, Monday through Sunday, excluding allowances for dead-heading, subsequent to September 18, 1961, account reduction in the number of positions, or because the employee reverts to the extra list.

5. Permit and cooperate in a joint check of the Carrier's records to determine the facts in any dispute of facts which may develop in the course of final settlement of these claims but not limited to the determination of the identity of claimants not listed by name in the foregoing and the amounts due each claimant.

EMPLOYEES' STATEMENT OF FACTS: The claims in these cases are based upon the provisions of an Agreement effective December 1, 1944, as amended and supplemented, and more specifically the Memorandum of Agreement effective October 29, 1961, made between the Southern Pacific Company (Pacific Lines), hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, now renamed the Transportation-Communication Employees Union, hereinafter referred to as Employees and/or Union. Copies of said Agreements are on file with your Board and are, by this reference, made a part of this Statement of Facts.

The four (4) claims incorporated into this appeal to your Board were handled separately on the property. The National Agreement of August 21, 1954 sets out the procedures and time limitations for the presentation and the processing of claims and grievances. There is nothing in that Agreement which prohibits the Employees from merging several claims between the same parties, arising out of the same Agreement involving identical issues, providing each of the claims are presented within the time limits provided in Section 1(a) of Article V thereof, and provided that the claims are presented in accordance with other provisions of the Agreement. Such procedure has been validated by your Board in numerous awards, among which are: Awards 12424 (Dorsey), 11300 (Moore), 11174 and 11120 (Dolnick), 10619 (LaBelle), 4821 (Carter).

Because of the long delay in submitting these unadjusted disputes to your Honorable Board, some explanation is in order. It might appear at first blush that uncertainty as to the validity of the claims was a factor in not seeking quick relief. However, this is not the case. When the parties

	(1) Compensated Hrs. For Working	(2) Compensated Hrs. For Deadheading	(3) Compensated Hrs. As Guarantee
Claim No. 3			
C. T. Carter			
10/16 - 10/22/1961	32 hrs. 00 min.	10 hrs. 50 min.	None
E. E. Kline			
1/1 - 1/7/1962	24 hrs. 00 min.	6 hrs. 30 min.	9 hrs. 30 min.
1/8 - 1/14/1962	8 hrs. 00 min.	45 min.	31 hrs. 15 min.
G. R. Swanson			
1/1 - 1/7/1962	16 hrs. 00 min.	13 hrs. 30 min.	10 hrs. 30 min.

Claim No. 4 in this docket is vague and indefinite, having been submitted in continuing blanket form failing to specify particular weeks or exact amounts being claimed and (under Item 4) failing to identify claimants. There are no facts to set forth since Petitioner refused to assume its burden to establish such facts other than to show that there are twenty named claimants. In this connection it should be noted that three of the identified claimants, namely, C. T. Carter, E. E. Kline and G. R. Swanson, are claimants in Claim 3 of this docket, in which specific factual data was presented by Petitioner. In this Claim 4, however, Petitioner has improperly requested Carrier to search its records to find potential or suspected claims and develop facts for Petitioner. In view of the state of the record in Claim 4, Carrier in its position will request the Board to dismiss the claim.

Copies of correspondence exchanged between the parties during the handling of these four claims on the property are attached and identified as follows:

Claim No. 1 — Carrier's Exhibit A
 Claim No. 2 — Carrier's Exhibit B
 Claim No. 3 — Carrier's Exhibit C
 Claim No. 4 — Carrier's Exhibit D

(Exhibits not reproduced.)

OPINION OF BOARD: The issue involved in this claim is whether or not the Carrier may deduct deadhead allowances, set forth in Rule 8 of the Labor Agreement, in the computation of the guarantee of forty (40) hours a week for extra employees under the provisions of Paragraph 7 of the Mediation Agreement between the parties effective October 29, 1961.

The Employees' position is that deadhead allowances provided for in Rule 8 are separate and apart from compensation paid for work performed and are in the nature of arbitraries, not wages, and therefore may not be used in computing time under Paragraph 7 of the Mediation Agreement. It further contends that the forty (40) hour a week guarantee in the Mediation Agreement is a guarantee of wages, and may not be offset by anything except wages.

The Carrier raises a procedural defense to the claim, asserting that the Petitioner has the burden, which it has failed to sustain, of identifying specific claimants and establishing all dates for which claim is made.

In relation to the merits of the claim, Carrier asserts that the computation of the forty (40) hour a week guarantee is not restricted only to the time paid for work, but must include all time paid for inasmuch as the parties in the Mediation Agreement did not provide therein that allowances such as deadheading was to be excluded from the computation. It further asserts that if time paid for deadheading was not deducted from the forty (40) hour a week guarantee, it would constitute duplicate payments contrary to the provisions of Paragraph 11 of the Mediation Agreement.

The Board, after careful study of the Labor Agreement, the Mediation Agreement and the Record, must conclude that the deadhead payments made to the Claimants, extra employes, cannot be regarded as time paid for in the computation of the forty (40) hour a week guarantee set forth in the Mediation Agreement of October 29, 1961.

We conclude that the wording of Paragraph 7 of the Mediation Agreement which reads: " * * * In applying this agreement to employes now holding seniority now and as of September 15, 1961, a guarantee of forty hours a week as an extra employe will be established for such employes available for work * * * " is a guarantee of forty (40) hours of work.

It is the further finding, based upon the conclusion, that deadhead payments provided for in Rule 8 of the Agreement are not wages, but are arbitraries. The provision of Paragraph 7 of the Mediation Agreement is a guarantee of wages.

Support for the conclusion herein is found in Award 16155, wherein it was held that deadhead payments cannot be included in the computation of the forty (40) hour work guarantee set forth in the Mediation Agreement between the parties in that dispute. See also Awards 11275 and 11850.

In relation to the procedural defense raised by Carrier, it is considered opinion of the Board that Claim 4 is vague and indefinite in that it fails to set forth identification of specific Claimants and specific dates on which violation is alleged to have occurred. This Board has, on numerous occasions, held that claims must be specific and not vague or indefinite, and that the burden is on the Petitioner to identify the Claimants and to present the dates relating to the claim. The mere insertion of the name of the Claimant in the claim without supporting evidence as to his claim does not meet the requirement that proper proof of the claim be submitted to entitle Claimant to affirmative relief. We find that the Employes have not sustained the burden of proof in Claim 4 and, accordingly, it must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated in accordance with the Opinion.