

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Henri A. Burque, Referee

PARTIES TO DISPUTE:

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 C. E. Alvis be compensated for travel time, Sanger to Bakersfield, San Joaquin Division, under Rule 8 of the agreement in effect and Memorandum of Agreement on the interpretation and application of such rule dated November 27th, 1931. Time is claimed for November 20, 1938.

EMPLOYES' STATEMENT OF FACTS: Claimant C. E. Alvis regularly assigned to a position at Sanger, San Joaquin Division, was the youngest assigned telegrapher on that Division.

His position was abolished and he was thereby placed in the category of an extra telegrapher for the reason that he could not secure a regular assignment because no telegrapher his junior held a regular assignment and obviously, he had no displacement rights as a regular assigned telegrapher that he could exercise under the Rules.

Claimant Alvis deadheaded to Bakersfield, called proper authority on telephone upon his arrival at Bakersfield and was told he could exercise his displacement rights as an extra telegrapher against his junior at Famoso. This he did. He did not claim deadhead time, Bakersfield to Famoso because he was exercising seniority displacement rights as covered by Rule 8.

POSITION OF EMPLOYES: There is an agreement in effect between the parties to this dispute and that agreement is on file with this Board.

EXHIBITS "A" to "I" are herewith submitted and made a part of this submission.

The claim is filed and prosecuted under Rule 8 of the Telegraphers' Agreement and the Memorandum of Understanding dated November 27th, 1931, copies on file with this Board.

EXHIBITS "B" and "D" set forth the claim in accordance with agreement provisions.

EXHIBITS "A," "C" and "E" define the position of the Carrier in declining the claim.

The Committee contends the Carrier's position as defined in these three Exhibits, "A," "C" and "E," is not supported by the agreement in effect.

The Committee quotes from EXHIBIT "A"—

"Inasmuch as you were holding a regular assignment at Sanger and not required to deadhead to Bakersfield when your position was abolished, your claim is respectfully declined."

and in connection with this quotation, states that the Carrier is in error.

Let us examine the facts.

During the handling of this claim with representatives of the carrier, the petitioner's representatives contended (see Exhibits "A" and "C") that when the claimant's regular assignment at Sanger was abolished on November 19, 1938, he then became an extra telegrapher and was therefore entitled to deadhead compensation for deadheading Sanger to Bakersfield on November 20, 1938, under paragraph (b), Section 4, of the memorandum of understanding of November 27, 1931. In taking this position, the petitioner fails entirely to consider the fact that when the claimant's regular assignment at Sanger was abolished, he exercised his seniority rights and displaced Extra Telegrapher Richter as second telegrapher-clerk at Famoso. Such being the case, there was no reason for the claimant traveling or deadheading to Bakersfield, and, if he did so, it was of his own volition. He should have proceeded directly from Sanger to Famoso and, had he done so, he would not be entitled to deadhead compensation for this movement, for he would be deadheading to assert his seniority rights. Rule 8 of the current agreement provides:

"This will not apply to extra telegraphers deadheading to assert seniority rights over other extra telegraphers."

Section 5 of the memorandum of understanding of November 27, 1931 provides:

"The provisions of this Memorandum of Understanding will not apply to extra telegraphers deadheading to assert seniority rights over other extra telegraphers."

The carrier submits that the foregoing conclusively establishes that the claim in this docket for deadhead compensation for deadheading Sanger to Bakersfield, November 20, 1938, is entirely without merit and should be denied.

The carrier directs the Division's attention to the fact that even though the claimant had not exercised his seniority rights when his position at Sanger was abolished and had deadheaded to Bakersfield of his own volition, he would not be entitled to deadhead compensation for such movement under Rule 8 or the memorandum of understanding of November 27, 1931: Compare Awards 318 and 319 of this Division.

CONCLUSION

The carrier asserts that its foregoing position conclusively establishes that it is incumbent upon the Division to either dismiss or deny the alleged claim in this docket.

OPINION OF BOARD: The essential facts are not agreed upon, except as follows:

Claimant Alvis, from August, 1938 to November 19, 1938, occupied the regular position of third telegraph-clerk at Sanger, which he had secured, traveled to and occupied by exercise of his seniority rights under bulletin. Upon the abolishment of his position early on the morning of November 19th, since he was the youngest regular (assigned) telegrapher, he held no displacement rights to a regular position and thus reverted to the status of an extra telegrapher.

What actually occurred on November 20th is very much in dispute. Claimant stated the situation to the General Chairman of the Committee in a letter of July 31, 1939, wherein he wrote:

"I called Mr. Carlson [Assistant Chief Clerk in Superintendent's office] around 9 AM from Reedley [a town nearby Sanger] and asked him if he had anything for me. He advised me that he did not have

anything at this time for me, but told me to come to Bakersfield [headquarters extra board location for the San Joaquin Division] and he would see what he could do for me. After arriving at Bakersfield he told me that I could displace Richter at Famoso on Nov. 21st, which I did."

He does not claim deadhead time Bakersfield to Famoso because he was then exercising seniority displacement rights as covered by Rule 8, but he does claim deadhead time from Sanger to Bakersfield, as he says he was ordered there.

The Carrier contends that the facts of the matter are, that according to its records, when Alvis phoned Bakersfield from some point on the line, he ascertained through the Assistant Chief Clerk there that he, Alvis, could displace extra telegrapher C. L. Richter at Famoso, and that Alvis made this displacement, assuming duty at Famoso at 4:00 P. M., November 21st.

Without corroborative evidence in the record supporting either of the above positions, it is impossible for us to determine the true state of facts in the case. The case must be remanded for further findings.

We can, however, consider the issues presented, and probably help to definitely solve the problems involved. At first the Carrier seems to agree that upon completion of his work at Sanger, Alvis reverted to the status of an extra telegrapher. We have already seen in Docket TE-2280, Award 2390, handed down this day, that upon abolishment of a regular position, there being no other junior regular position available, a regular telegrapher becomes automatically an extra telegrapher; so that claimant's status on the morning of November 20, 1938, was that of an extra telegrapher. Under Rule 8, Memorandum of Understanding 4 (b), he should have been ordered to report to headquarters, if not ordered elsewhere for service (again see Docket TE-2280, Award 2390). According to claimant, he was ordered to report to headquarters, but according to Carrier, he was advised of position at Famoso, which he could and did displace. There is no reconciling these two wholly divergent versions of the facts in the case. If the Claimant's version is true, he is entitled to deadhead time from Sanger to Bakersfield. If the Carrier's version is true, Claimant is not entitled to deadhead time. The parties apparently agree these are the proper conclusions to be arrived at in this case, and so does this Board. This case is, therefore, remanded for a finding of fact.

The Carrier contends the claim should be declined because it lay in abeyance practically 2½ years before final prosecution. We cannot subscribe to this. Awards cited for the Carrier in support of its contention disclose two cases where the time elapsed for presentation of claims to this Board was, respectively, 6 and 11 years. In three other cases where the Board concluded the delay was unreasonable, retroactive claims were denied, because to grant them would have been unfair and unjust, but recognized the claims well established for the future.

We join with this Board in Awards 685, 2167 and 2211, when, in the two latter cases, a lapse of two years and seven months, and two years, was deemed not sufficient to refuse consideration of the claims. As is said in all three Awards, the Railway Labor Act fixed no limitation on the time within which a dispute must be submitted to this Board, nor was the subject covered by the agreement. Each case must rest on its own merits, and when injustice to the party setting up the defense of laches does not result, there is no justifiable reason for not entertaining the controversy.

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 employe involved in this dispute are respectively carrier and employe 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 claim be remanded for fact finding.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1943.