

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, 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 Agent-telegrapher R. R. Roberts, Dos Palos, Western Division, be paid an additional four hours compensation account transferring station accounts at Dos Palos, March 29th, 1941.

EMPLOYEES' STATEMENT OF FACTS: Claimant Roberts requested and was granted leave of absence while assigned to the position of Agent-telegrapher, Dos Palos, Western Division. He was relieved March 29th, 1941. Eight hours were consumed in making transfer to the incoming relief, claim filed for this time and was reduced to four hours by the Carrier.

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

POSITION OF EMPLOYEES: EXHIBITS "A" to "N" inclusive are shown and made a part of this submission.

The dispute is filed under Rule 11 (a) and the Memorandum of Understanding dated San Francisco, Calif., October 22nd, 1928, paragraph (b) being pertinent to this dispute.

We quote Rule 11 (a):

"RULE 11.

Transferring

(a) Time lost in transferring from one station or position to another shall be paid for at the rate of the position from which transferred, excepting such time as may be lost of the employe's own accord. The word 'transferring' includes transfer in the exercise of seniority and also time lost checking in and out of positions."

and paragraph (b) of the Memorandum—

"In future compensation will be allowed on basis of actual time consumed making check, the understanding being that the work will be handled as expeditiously as possible."

Transferring of accounts under circumstances surrounding this claim is a requirement of the Carrier. It consumes the time of the employe. The Carrier objects to compensation for the time used by the employe in meeting the requirement of the Carrier.

6. By a letter dated June 17, 1941 (Exhibit "C"), the petitioner's general chairman appealed the claim mentioned in paragraph 5 to the carrier's assistant manager of personnel, who declined it in a letter dated August 12, 1941 (Exhibit "D").

The said claim was discussed in conference by the petitioner's general chairman and the carrier's assistant manager of personnel on November 5, 1941, at which time the latter again declined the claim and confirmed said declination in a letter dated November 6, 1941 (Exhibit "E").

POSITION OF CARRIER: It is the carrier's position that the transferring of the Dos Palos station accounts on March 29, 1941, from the claimant to Relief Agent-Telegrapher Barnes, should have been completed, if handled as expeditiously as possible, in four (4) hours or less, and such being the case, coupled with the fact that the only service performed by the claimant (for which he claimed compensation) on said date was the transferring of station accounts, he was properly compensated for four (4) hours on March 29, 1941.

On October 22, 1928, the petitioner and the carrier signed a memorandum of understanding, paragraph (b) of which is as follows:

"(b) In future compensation will be allowed on basis of actual time consumed making check, the understanding being that the work will be handled as expeditiously as possible." (Emphasis ours.)

A copy of said memorandum of understanding, in its entirety, is shown herewith and made part of this submission as Exhibit "F."

Subsequent to the presentation of the claim mentioned in paragraph 4 of the foregoing statement of facts, the carrier's traveling auditor, whose duties include a periodic check of the Dos Palos station accounts, submitted a report showing the work necessary to effectuate a transfer of station accounts at Dos Palos and the actual time necessary to complete said work. The said report is as follows:

"List cash, agency drafts, audited and spot cash bills.	1/2	Hour
List and count tickets and revenue baggage checks.	1/2	"
Prepare form 751-Agents report of uncollected freight accounts. Also check freight on hand.	1/2	"
Prepare Daily Balance Sheet, writing and closing cash book and instructing incoming agent on routine work.	1 1/2	"
Miscellaneous work not included in above	1	"
Total	4'00"	"

When the claimant returned to duty at Dos Palos on April 5, 1941, the amount of time consumed in transferring the station accounts from Relief Agent-Telegrapher Barnes to the claimant was four (4) hours.

The carrier submits that the report of the traveling auditor, quoted above, coupled with the fact that the transfer of station accounts on April 5, consumed but four (4) hours, conclusively establishes that had the transfer of station accounts been handled as expeditiously as possible on March 29, 1941 said transfer would have been completed in four (4) hours; therefore, the claimant was properly compensated for four (4) hours on March 29, 1941.

CONCLUSION

The carrier asserts that it has established that the claim in this docket is without merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: This claim arises under Rule 11 (a) as interpreted by paragraph (b) of a Memorandum of Understanding entered into October

22nd, 1928, between the organization and the carrier. The rule and paragraph (b) of the Memorandum with respect to it, provide as follows:

RULE 11. TRANSFERRING

"(a) Time lost in transferring from one station or position to another shall be paid for at the rate of the position from which transferred, excepting such time as may be lost of the employee's own accord. The word 'transferring' includes transfer in the exercise of seniority and also time lost checking in and out of positions."

"RULE 11 (a). MEMORANDUM OF UNDERSTANDING.

"(b) In future compensation will be allowed on basis of actual time consumed making check, the understanding being that the work will be handled as expeditiously as possible."

Claimant was agent-telegrapher at Dos Palos. March 29, 1941, he "checked out" of the position with a relief agent-telegrapher. He made claim for eight hours' pay consumed in making the transfer. The carrier allowed him four.

The carrier takes the position that, if the work had been "handled as expeditiously as possible," the transfer could have been made in four hours.

The principle factors, upon which the carrier's position is based, are: (1) an estimate by its auditor that four hours was sufficient for making the transfer; (2) the fact that claimant "checked in" a week later in four hours; (3) the claim includes time consumed in checking express and Western Union accounts; (4) the claim includes time consumed in doing station work. Factors 3 and 4 are untenable. Obviously, when station work intervenes, the work of checking is interrupted, whether one or the other or both men take care of it. For, to do the work of checking, the presence of both is necessary. Time necessarily spent in doing station work is, in contemplation of the rule, time consumed in making the check.

Although claimant was paid by the Express Company and by the Western Union for work handled for them, nevertheless, the carrier is, under the rule, obligated to pay for time consumed in checking those accounts.

The fact that claimant "checked in" on April 5th in four hours is not a controlling factor. He was familiar with the accounts; and it appears from the record that the station work was much heavier on March 29th than on April 5th.

The remaining factor, relied on by the carrier, is the estimate of its auditor that the transfer could and should have been made in four hours. Against this we have the word of the claimant that it actually took eight hours. Unless the claimant is falsifying his word carries more weight than the opinion of the auditor.

The presumption is that a man is honest; and we must act on that assumption unless we can lay hold of something tangible in the record which indicates the contrary. Here we are unable to do so. We think claimant has sustained the burden of proof.

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 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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1944.