

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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, under Rules 14, 16 and 37(b) of the Telegraphers' Agreement of September 1, 1937.

1. That J. J. McGovern, Portland Division, be paid for two hours at overtime rate daily, plus 64 miles round trip automobile mileage each day at 7c per mile, March 14th, 1942 through March 12th, 1943, account required to travel from Salem, Oregon, his place of residence, to Wellsdale, Oregon, while performing service as Agent-telegrapher at Wellsdale, Oregon, an isolated point.

2. That Bessie C. Simmons, Portland Division, be paid for one hour at overtime rate daily, plus 35c round trip bus fare each day, December 5th, 1942 through May 31st, 1944, account required to travel between Albany, Oregon, her place of residence, and Wellsdale, Oregon, while performing service as Telegrapher-clerk at Wellsdale, Oregon, an isolated point.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. J. McGovern and Mrs. Bessie C. Simmons were employed as Agent-telegrapher and Telegrapher-clerk respectively at Wellsdale, Oregon, an isolated point, which is located over one mile inside the Army Post known as Camp Adair. The Carrier failed to provide quarters for the Agent-telegrapher and Telegrapher-clerk and there were no living quarters in the encampment which could be rented. In fact, all land and housing units were owned by the Government except the property of the Southern Pacific Company, making this point an isolated point so far as securing quarters were concerned.

The nearest points where living quarters could be secured were Albany or Salem, Oregon. Wellsdale is located on the Southern Pacific West Side Branch, milepost 699. Salem is located on the main line of the Southern Pacific Railroad at milepost 718.2, 32 miles by highway from Wellsdale, and Albany is located at milepost 690.9 on the main line of the Southern Pacific Railroad, approximately 10 miles from Wellsdale by highway.

There is no regular scheduled passenger train service on this branch line upon which Wellsdale is located.

Claimants McGovern and Simmons were required to find living accommodations for themselves, McGovern locating at Salem, Oregon, having to use his own automobile to reach this point of employment, there being no train or bus service permitting him to reach his point of employment at the

The petitioner will undoubtedly contend that Wellsdale is an isolated point and therefore the carrier had the obligation of providing living quarters for employes engaged at Wellsdale.

Wellsdale is not an isolated point for the reason that said station is located within the reservation limits of Camp Adair. At said camp the government provided living quarters for its military personnel, but due to military restrictions, did not permit any civilians to live on said reservation; it did, however, permit the carrier's employes engaged at Wellsdale to obtain their meals at the camp cafeteria at reasonable cost. In addition, bus transportation from Albany and Salem to Wellsdale was also provided by private bus operators at established rates and transported both civilian employes and military personnel to and from Camp Adair and other points including Albany and Salem.

If the petitioner's position is correct, which it is not, then the carrier would be obligated to furnish living quarters at Wellsdale regardless of the fact that it was impossible to do so due to military restrictions.

Award 2520 of this Division sustains the carrier's position that even if Rule 37(b) were applicable, as contended by the petitioner, no allowance is due the claimants for transportation going to and from Wellsdale. The following is quoted from the Opinion of Board in that Award:

"The claim includes an item of \$12.00 on account of cost incurred by claimant in operation of his automobile in going to and from Yuma. This much of the claim cannot be allowed because it does not come within the purview of Rule 37(b)."

Even though the claim for a mileage allowance involved in this docket was proper, which it is not for the reasons cited above, a claim for "7c per mile" would be without basis for the reason that when the carrier authorizes employes to use their private automobiles in connection with the performance of their duties, it pay such employes a mileage allowance of 5c per mile.

There is one additional point which the carrier desires to make, namely, that it was because of personal preference, rather than necessity, that J. J. McGovern lived 32 miles from Wellsdale and drove his automobile 64 miles each day to Wellsdale and return. The claimant was never "required to travel from Salem, Oregon, his place of residence, to Wellsdale, Oregon," as stated in statement of claim, but resided at Salem, rather than a nearer location (Albany or Corvallis) solely by reason of his own personal preference.

CONCLUSION: The carrier submits that it has conclusively established that the claim in this docket is without basis and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimants were assigned as Agent-telegrapher and Telegrapher-clerk at Wellsdale, Oregon. Wellsdale is located one mile inside an army post known as Camp Adair. There were no living quarters available at this point. The Agent-telegrapher resided at Salem, a point 32 miles distant. The Telegrapher-clerk resided in Albany, a point 10 miles distant. The Agent-telegrapher claims seven cents per mile for the 64 miles traveled each day and the Telegrapher-clerk claims thirty-five cents per day, it being the bus fare paid each day for transportation. The time used in going to and coming from work is the basis of claims for overtime pay.

Claimants rely upon Rule 37(b) of the current Agreement, the applicable part of which is:

"Where living quarters are furnished by the Company, water, fuel, and lights (except electric) will also be furnished, for all of which a reasonable charge will be made, except at isolated places where such facilities will be furnished without charge."

Wellsdale was clearly an isolated point within the purview of the cited rule. This fact obligated the Carrier to provide free living quarters. Awards 1483 and 2520. While Rule 37(b) does not specifically so provide, it is the intendment of the rule that the Carrier shall provide living quarters under such conditions and, if it does not, that it will reimburse the employe for the additional burden cast upon him by the Carrier's breach.

The record is clear that there were three towns each approximately 10 miles distant from Wellsdale where living quarters could be had. The Telegrapher-clerk lived in one of these towns and was required to spend thirty-five cents each day for bus fare in getting to and from work. This is a loss growing directly out of the failure of the Carrier to provide living quarters at Wellsdale. The Agent-telegrapher lived thirty-two miles from Wellsdale. He is in no position to claim mileage to and from that point. Living quarters were available in neighboring towns only ten miles distant. Mileage in excess of 20 miles per day will necessarily be deemed as having been for the convenience of the Agent-telegrapher. Mileage of 20 miles will be allowed at five cents a mile, a mileage rate we find from the record to be reasonable.

The Carrier contends that transportation expense is not authorized by the Agreement and cites Award 2520. We think that award is in error. To us it is clear that reasonable costs of transportation afford a basis for claim under the circumstances here shown.

The claim for overtime pay for time consumed in going to and from work has no merit. To allow such a claim would constitute the writing of a rule having implications of such far reaching affect as were never within the contemplation or intendment of the parties.

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 parties waived oral hearing thereon;

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 as charged.

AWARD

Claims 1 and 2 sustained to the limited extent shown by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.