

Award No. 4366
Docket No. TE-4285

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton (now the Gulf, Mobile & Ohio Railroad), that extra telegrapher J. V. Brower, whose home station was Kansas City, shall be paid deadhead time of 3 hours under Rule 23 (a) of The Alton Railroad Telegraphers' Agreement on each of the following named days on which he was required to deadhead from Kansas City to work at Higginsville, Missouri, on the position specified:

Day Worked	Position Worked
Wednesday, February 26, 1947	Second Trick
Thursday, March 20, 1947	Third Trick
Wednesday, March 26, 1947	Second Trick
Thursday, March 27, 1947	Third Trick
Wednesday, April 2, 1947	Second Trick
Thursday, April 3, 1947	Third Trick
Wednesday, April 9, 1947	Second Trick
Wednesday, April 16, 1947	Second Trick
Thursday, April 17, 1947	Third Trick

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date June 16, 1944, as to rules of working conditions is in effect between the parties to this dispute.

J. V. Brower, in whose behalf this claim is brought, was an extra telegrapher on the Western Division of The Alton Railroad (now the Gulf, Mobile & Ohio Railroad) with home station at Kansas City, Missouri.

At Higginsville, Missouri, on the Western Division, three operator-clerk positions were maintained on the seven days of each week, with assigned hours 7:00 A. M. to 3:00 P. M., 3:00 P. M. to 11:00 P. M., and 11:00 P. M. to 7:00 A. M. Under the Six Day Per Week Agreement Rule 29 of the Telegraphers' Agreement these three positions were regularly assigned one relief day in each week in the following named order:

First Trick—7:00 A. M. to 3:00 P. M.—assigned relief day Tuesday
Second Trick—3:00 P. M. to 11:00 P. M.—assigned relief day Wednesday
Third Trick—11:00 P. M. to 7:00 A. M.—assigned relief day Thursday

In arranging the relief days for all of the positions on the Western Division it was not possible to assign the three relief days at the Higginsville office to a regular relief position, and under the second paragraph of Rule 29 of the Telegraphers' Agreement the relief days on the three positions at Higgins-

of days worked continuously on the position. All of this is in accordance with the provisions of Rule No. 23 as it has been understood and applied throughout the years.

In the instant dispute, Telegrapher Brower, in order to avoid expenses that he would have incurred in staying at Higginsville more than one day each week, chose to return to his home at Kansas City each day, using the Carrier's train service in making the trips between Kansas City and Higginsville each day. It is the contention of the Employes that he should be paid a separate deadhead on each day, instead of the one deadhead allowed. The deadheading that he performed, other than the initial trip, was for his own convenience and not under any instructions from the Carrier. When he went to Higginsville each week, he had definite instructions that he would work one, two or three consecutive days. If his assignment for such relief service was such a distance from Kansas City that he could not go home daily, he would be obliged to stay at the point where he was performing relief service and would have to assume his own personal expenses while at such point. In such a case, no claim could be made for other than the initial deadhead trip. In this case, because of the short distance and available train service, it was possible and convenient for him to return to Kansas City daily, and thus saved expenses while away from the point where he made his home. Therefore, the deadheading, other than the initial trip, was solely for his own convenience.

The implications involved in this dispute are more extensive than indicated in this one claim. Extra telegraphers are used in filling vacancies and such vacancies may be for a number of consecutive days. When so used, they are paid for deadheading on the first day in accordance with Rule No. 23. If the vacancies which they are filling are close to the point at which they make their home, and train service permitting, it is common practice for them to return to their home point each day to save expenses away from home. Some employes even use their own automobiles for their convenience in returning home each day. The claim of the Employes in this case is broad enough to cover all such conditions. The claim is an attempt to enlarge upon the provisions of Rule No. 23, and the approved and accepted interpretation and application of the rule since its inception.

So far as the Carrier has knowledge, no claims for more than one deadhead in the circumstances involved in this case have heretofore been made or paid. In their prosecution of this claim, the Employes have not alleged that previous claims of this character have been paid, but if they should now allege that any such claims have been paid heretofore, the Carrier maintains that such payments were timekeeping errors and not to be taken as reflecting the Carrier's interpretation of the deadhead rule. It is more or less of frequent occurrence that erroneous payments are made by timekeepers, causing over payments or under payments in wages due.

The claim is not supported by rules of agreement or past practice, and should be denied.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of your Board.

OPINION OF BOARD: Claimant, J. V. Brower, an extra employe under the Telegraphers' Agreement, was assigned to work certain rest days at Higginsville, Missouri; Higginsville is fifty-five miles from Claimant's home station, Kansas City. The relief days at Higginsville for the regularly assigned employes during the time involved in this claim were as follows:

First Trick, 7:00 A. M. to 3:00 P. M., assigned relief day Tuesday
Second Trick, 3:00 P. M. to 11:00 P. M., assigned relief day Wednesday
Third Trick, 11:00 P. M. to 7:00 A. M., assigned relief day Thursday

During this period Claimant was the senior available extra telegrapher. Each day that he was used to work relief days at Higginsville he was instructed before leaving his home station as to whether he would work one, two or three relief days. The claim is for a minimum of three hours' dead-

head time for each day that Claimant worked at Higginsville. Rule 23(a) of the Telegraphers' Agreement provides:

"RULE 23.

Deadheading.

(a) Extra employees deadheading will receive \$1.07½ per hour while in transit, computed from leaving time of the train until arrival at station where service is to be performed, with a minimum of three (3) hours. This rule not to apply to regular relief agents or to new employees accepting first assignment."

The Carrier contends that Rule 23(a) contemplates that when an extra employee is sent to any station to work relief days, he is to be paid for only one deadhead trip, regardless of the number of days worked continuously at the station; the Carrier states that in the past Rule 23 (a) has been applied in this way. Petitioners, in regard to Carrier's contentions, made the following statement:

"Had Brower been assigned to work three successive days at Higginsville on the same position, he would have been entitled under Rule 23 (a) to **deadhead time on the going trip**. But this was not the condition under which Brower was assigned to work on different rest days on the three different positions at Higginsville. * * *." (Emphasis added.)

Thus it is seen that Petitioners admit that had Claimant Brower been assigned to work three successive days at Higginsville on the same position, he would be entitled to pay for one deadhead trip only. But they contend that since Brower performed work on three different tricks he is entitled to deadhead pay for each day that he worked at the Higginsville station. All of the work in question was performed at the same station; in view of this, and in view of other circumstances of this case the Board finds the distinction sought to be made is without merit.

The provisions of Rule 23(a) have continued unchanged (except for the rate of pay) for many years; the practice of the parties under the rule affords a guide in determining what the parties had in mind when the rule was written. See Awards 3727, 2436, 2326, 1397, 887 and 213.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.