

Award No. 8267

Docket No. TE-7240

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy—Referee

PARTIES TO DISPUTE:

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:

1. The Carrier violated the provisions of the agreement between the parties when it failed to make free living quarters available to Mrs. Leah Rosenfeld, extra telegrapher, Los Angeles Division, when she was required to relieve regular assigned second shift telegrapher, Bertha C. Hermanson at Mecca, California, December 7 to December 18, 1949, inclusive.

2. As a result of the violation the Carrier shall compensate Mrs. Leah Rosenfeld in the amount of \$17.00 for rental paid during the period involved.

EMPLOYEES' STATEMENT OF FACTS: Mecca, California, is located at Milepost 624.1 on the Salton Subdivision of the Los Angeles Division of the Carrier. At the time of this claim there were three telegraph service positions at this station. The Agent-telegrapher had assigned hours 8:00 A. M., to 4:00 P. M. He lived in the station building in quarters provided by the Carrier. The second telegrapher-clerk worked assigned hours from 4:00 P. M., to 12:00 midnight. This second telegrapher-clerk, Bertha C. Hermanson, resided in living quarters provided by the Carrier. The third telegrapher-clerk worked between 12:01 A. M., and 8:00 A. M., and did not reside on company property.

In this claim we are particularly concerned with the living quarters provided by the Carrier for the second shift telegrapher-clerk position. The records show that for some time prior to June 1, 1925, the Carrier furnished a freight box car body for the second shift telegrapher-clerk at Mecca as living quarters, for which no charge was made. At a date subsequent to June 1, 1925, the freight box car body was removed as living quarters and after the removal of that type of accommodation the second shift telegrapher-clerk was permitted to use an abandoned pumphouse in lieu of the box car, which was on the company property. This pumphouse was used as living quarters for the telegraphers prior to August 1941, and has continuously been used for that purpose since that date without any charge being made to the occupant of these quarters by the Carrier. At the time of this dispute the pumphouse was occupied by the regular occupant of the second shift telegrapher-clerk position, Bertha C. Hermanson.

"Rule 37

"Living Quarters

"Section (a). 1. At stations where living quarters, either in station buildings, cars or separate buildings, together with allowances of fuel, ice and other supplies have heretofore been furnished employes without expense to themselves, such concessions shall not be withdrawn by Carrier, after the adoption of this agreement.

"2. Where living quarters cannot be secured at isolated points, the Carrier shall provide suitable quarters without charge for each employe, and in addition furnish fuel, ice and water free of charge."

That rule does not support the claim presented.

It will be noted that an isolated point is defined as a point where living quarters cannot be secured. It has been established by the facts that the claimant on dates involved in this docket had no difficulty in securing living quarters in Mecca, such being the fact it is obvious that Mecca does not fulfill the definition of an isolated point. This is further substantiated by the fact that the third telegrapher-clerk at Mecca has never been furnished with living quarters by the carrier, but to the contrary, rents quarters in Mecca. **Clearly under the above quoted rule of the current agreement the carrier was in no way obligated to furnish living quarters free of charge to either the claimant or Miss Hermanson.**

The fact that the carrier, solely in a spirit of helpfulness and cooperation, permitted Miss Hermanson to live in an unoccupied sectionman's bunkhouse at Mecca does not in any manner under the rule support petitioner's contention that the carrier was obligated to furnish free living quarters to the claimant.

CONCLUSION

The carrier asserts that claim in this docket is without basis or merit and, therefore, respectfully submits that it is incumbent upon this Division to deny the claim.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The regular incumbent of the second trick telegrapher-clerk position at Mecca, California, had been furnished living quarters by the Carrier, without expense to her, for at least twenty years, first in a converted boxcar and later in a bunkhouse. She became sick, and the Claimant, an extra telegrapher, was sent to relieve her and did relieve her from December 7 to December 18, 1949. The regular incumbent refused to give up her living quarters, and the Carrier failing to furnish living quarters to the Claimant she was forced to rent living quarters for the period at an expense of \$17.00. The Carrier refused to reimburse her.

The claim is based upon Rule 37, Section (a), 1, of the Agreement of December 1, 1944, which reads:

"At stations where living quarters, either in station buildings, cars or separate buildings, together with allowances of fuel, ice and other supplies have heretofore been furnished employes without expense to themselves, such concessions shall not be withdrawn by the Carrier, after the adoption of this agreement."

The Carrier has admitted in the record that if it were obligated to furnish living quarters to the employe working the position, that obligation would run in favor of the Claimant. Its denial of the obligation is based upon two arguments, which will be commented upon briefly.

First, it says that it merely permitted the regular incumbent to occupy the bunkhouse "in the spirit of helpfulness and cooperation", by which we presume it means that at the time that incumbent moved into the bunkhouse the Carrier was not obligated by contract to furnish quarters. Perhaps that is true. The answer is that when the Agreement of 1944 was entered into, containing Rule 37, Section (a). 1, an obligation arose to continue to furnish those quarters.

Second, the Carrier argues that it has not violated Rule 37, Section (a). 2. It should not be necessary to state that upon a charge of violation of one section of the Agreement it is no defense to assert that there has been no violation of a different section of the Agreement.

Those are the Carrier's only defenses on the merits, and they are quite patently without merit.

Apart from the merits, the Carrier argues that the case is barred by laches because, after the claim was declined on appeal to Carrier's Assistant Manager of Personnel, on March 29, 1951, no further action was taken until March 15, 1954, a lapse of three years, when the Organization sought to discuss it on a Grand Lodge Officer docket.

Article 5-2 of an Agreement dated August 21, 1954, disposes of this contention. That provision allows 12 months, namely, to August 21, 1955, for appeal to this Board "of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule." Appeal was taken to this Board within that designated time.

For these reasons the claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, 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 Carrier violated the Agreement as alleged in the claim.

AWARD

Items 1 and 2 of the claim are sustained, and the Claimant is awarded the sum of seventeen dollars (\$17.00).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1958.