

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, 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:

1. Carrier violated the provisions of the agreement between the parties when it failed to make free living quarters available to R. C. Emmert, extra telegrapher, Salt Lake Division, when he was required to relieve regular assigned second shift telegrapher-clerk J. K. Browning, at Hazen, Nevada, May 11 to 22, 1954, inclusive.
2. As a result of the violation, Carrier shall now be required to reimburse J. K. Browning in the amount of \$17.50 for rental paid during the period involved.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). A copy of this agreement is on file with the Third Division and is hereby made a part of this dispute as set out herein word for word.

Hazen, Nevada is an isolated point located at Milepost 288.1 on the Sparks Subdivision of the Salt Lake Division of the Carrier. At the time of this claim there were three telegraph service positions at this station. The Agent-telegrapher was assigned 8:00 a.m. to 4:00 p.m.; the second shift Telegrapher-clerk—4:00 p.m. to 12:00 midnight; and, the third shift—12:01 a.m. to 8:00 a.m. All of these employees are furnished living quarters free of charge by the Carrier under the terms of the Telegraphers' Agreement.

This instant claim involves the living quarters required to be provided by the Carrier for the occupant of the second shift Telegrapher-clerk position at Hazen. The records show that both prior to and subsequent to the December 1, 1944 Agreement, referred to above, the Carrier furnished a house for the second shift Telegrapher-clerk position at this station as living quarters, for which no charge was made to the employee.

complied with when the carrier furnished free living quarters for the use of the employe actually filling the position of second telegrapher-clerk at Likely, California.

Section (a) 2, Rule 37, of the current agreement reads as follows:

"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."

It is clearly apparent from the language of the Rule that it was the intent of the parties that the carrier is obligated to furnish living quarters without charge at isolated points only to the employe actually working the position involved. The rule has been so applied. In accordance therewith, it has been the practice for the regularly assigned employes being relieved to turn over the living quarters to the relief employe while position is filled by him (relief employe) unless other mutually satisfactory arrangements are made by the employes themselves and without expense to the carrier.

Since, as established by carrier's statement of facts, second Telegrapher-Clerk Browning did not desire to give up the living quarters provided for the position of second telegrapher-clerk at Hazen during his vacation, any expense incurred by Telegrapher Browning resulting from mutually satisfactory arrangements as may have been made by Telegrapher Browning with Telegrapher Emmert to permit Browning to continue to occupy the living quarters are his own responsibility.

Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that the instant claim involves a request for change in agreement, which is beyond the purview of this Board. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was not intended by the parties.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

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: This is a companion case to Award No. 8359, involving the same parties and rules, and governed by the same principles. In this case, as in that, Carrier sent a message to an extra employe instructing him to provide vacation relief and to occupy the living quarters provided by Carrier for the regular occupant of the position which he was assigned to relieve, unless other mutually satisfactory arrangements for housing were made between him and the regular occupant. Copy of this message was sent to the regular occupant who is the Claimant here.

Instead of vacating the quarters or sharing them with his relief employe, Claimant procured other quarters for his relief at a cost to himself of \$17.50. His claim is for reimbursement of that amount.

In Award No. 8359, we held, in accordance with the past practice of the parties, that the relief employe, rather than the regular employe, has the right to occupy the quarters during the period of relief and that the Carrier has the obligation to see that the relief employe is furnished with suitable quarters; since the relief employe in that case had to furnish his own quarters, his claim for the expense involved was sustained. Here, however, the claim is filed not by the relief employe but by the regular employe. The regular employe chose to remain in the quarters rather than give them up to the relief employe who was entitled to their use. In order to do this, he procured other quarters for the relief employe which were apparently satisfactory to him. Under the past interpretation of the parties, as set forth in Award No. 8359 and repeated above, the Carrier's obligation to furnish quarters during the period of relief is to the relief employe, not the regular employe; Claimant therefore is not entitled to the reimbursement claimed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.