

Award No. 10030

Docket No. TE-8528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**UNION PACIFIC RAILROAD COMPANY
(NORTHWESTERN DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South Central and Northwestern Districts), that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to compensate W. H. Oppie in accordance with Rule 14 of the Telegraphers' Agreement for deadhead services on January 14, 15 and January 21, 22, 1955.

2. Carrier shall be required to compensate W. H. Oppie for six hours at the pro-rata rate, applicable to third shift, Kenton, Oregon, for each day (January 14, 15 and January 21, 22, 1955) as set forth above.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between Union Pacific Railroad Company (South Central and Northwestern Districts), hereinafter referred to as Carrier or Management and the Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement became effective January 1, 1952. The agreement with amendments is on file with this Board and is, by reference, made a part hereof as though set out herein word for word.

This dispute was handled on the property in the usual manner and through the highest officer designated by Carrier to handle such disputes and in accordance with the Railway Labor Act as amended. The dispute having failed of adjustment on the property, is submitted to this Board as provided in the Railway Labor Act as amended and this Board has jurisdiction of the parties and the subject matter.

This dispute concerns a very narrow matter of agreement interpretation. There is no dispute between the parties as to the facts. The sole question involved is whether the claimant is entitled to be paid for deadhead allowance from his headquarters at Troutdale to Kenton, Oregon and return, on two separate dates (January 14-15; January 21-22, 1955).

W. H. Oppie is an extra telegrapher holding seniority on seniority district No. 5. In accordance with Rule 52, which shall be hereinafter set forth in full,

nature, denied by the Assistant to Vice President, have similarly been abandoned by the Organization.

The Assistant to Vice President's letter of March 29, 1955 (Carrier's Exhibit F), covering the Fahnlander claim, shows plainly how the rules have been applied in the past and gives clear indication of the distinction between movements of the nature covered by Rule 14 for which deadhead pay is required and those which occur under Rule 29. In the latter circumstance, the Agreement provides that deadheading will not be paid for. The rules have always been applied in this manner. It would be difficult, in view of the simplicity and clarity of their construction, to construe them otherwise.

The General Chairman, in his letter dated April 14, 1955 (Carrier's Exhibit D, fourth paragraph on page 1), states, in part:

"In this connection I refer you to your letter of March 29, 1955, file C 031-25-7, on the subject of deadhead allowances to extra employees who perform rest day relief."

Because there were several letters written by the Assistant to Vice President, in addition to the one on the Fahnlander case, to the General Chairman on this same subject, dated March 29, 1955, same file, the Carrier is attaching copies of four other letters of that date, identified as Carrier's Exhibit G-1, 2, 3 and 4.

Some of the claims in these cases were for dates prior to the claims for Oppie and some of them for later dates; all claims for payment of deadhead to and from the performance of tag-end relief service were declined and were not appealed. All claims for payment of deadhead allowances to extra employees for traveling to and from points where the extra employees worked assignments, other than the rest day relief of those particular assignments, were paid.

The claims in this case are not supported by any working agreement rule but, instead, are specifically denied by rule provisions and should be denied.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

OPINION OF BOARD: The Claimant herein is requesting deadhead pay for two days when he was asked to go to another station to fill a shift on a tag-end day when there was no regular relief employee assigned. The Claimant is an extra employee.

There are two issues before this Board:

- (1) Is this claim properly before the Board?
- (2) Does the Collective Bargaining Agreement cover such dead-head payment or does it by specific reference exclude such payment?

Issue One — The Carrier contends that this case was not processed in the usual manner on the premises in that the final conference between the parties was not held before the case was processed to this Division. The record discloses that the written correspondence required between the parties was properly handled and that there had been at about the same time a final conference with the Carrier involving an identical claim which was denied. It is impossible to see what could further have been gained by an additional conference concerning an identical claim and the law has never required a party to do a futile thing.

Furthermore the contention of the Carrier has been before this Board before. In Award 2786 it was stated:

"At the outset we are confronted by Carrier's claim that the case is not properly before the Board, contending that no conference had been held on the property.

The record shows that the claim was submitted in writing to the proper official of the Carrier and that it was progressed by the Claimant up to the Superintendent on the Dallas Division and then to Mr. T. C. Montgomery, Manager of Personnel at Houston, Texas. Mr. Montgomery, in his letter of Feb. 3, 1944, declined the claim. The claim having been declined by the official representing the Carrier, it would be a useless thing to hold conference thereafter; not only that, but under the Act the Carrier has the same obligation to see that conferences are held as have the Employes. We hold that the claim is properly before this Board."

See also Award 7403.

Issue Two — While there is much controversy in the record as to whether the Carrier has or has not interpreted the Agreement as contended by the Organization this aspect of the dispute is being ignored as the Agreement must control in the absence of such patent ambiguity that past practice may have established what the parties intended the Agreement to mean.

The Organization claims that the right to the deadhead pay is governed by Rule 14. This rule reads:

"Deadheading. Except as provided in Rules 29 and 52, extra employes who have performed initial service, traveling at the instance of the railroad, and regularly assigned employes used for relief, will receive \$1.659 per hour for necessary time consumed in deadheading, with a minimum of six hours and a maximum of eight hours for each movement, and in addition thereto, pay for actual time worked on date deadhead trip is made."

The Carrier on the other hand contends that this comes within Rule 29 which it will be noted is a specific exception to Rule 14.

While all of Rule 29 is involved the Carrier places special emphasis on one paragraph of Rule 29 (e) 4 (e):

"The payments herein provided will apply only to employes holding regular relief assignments other than covered by Rule 12. Employes who perform relief service under this rule shall not be paid expense allowance or for deadheading. Turnovers between regular and relief employes shall be without expense to the carrier." (Emphasis ours.)

The difficulty with the position of the Carrier is that Rule 29 must be read in its entirety in order to determine the meaning of the isolated emphasized section of 29 (e) (4) (e) and this sentence cannot be taken out of context.

An examination of Rule 29 shows that it was negotiated in accordance with the 40 hour week rule. The Rule starts out by establishing the 40 hour week and then discusses 5 day, 6 day and 7 day positions. It then comes to 29 (e) (1)

which is headed Regular Relief Assignments and in (e) (1) (2) (3) (4) (b) (c) (d) and (e) the Agreement consistently refers to regular relief assignments and provides special benefits to employees who are engaged in regular relief assignment work.

29 (e) 4 (e) then states:

"The payments herein provided will apply only to employees holding regular relief assignments other than covered by Rule 12. Employees who perform relief services under this rule shall not be paid expense allowance or for deadheading. Turnovers between regular and relief employees shall be without expense to the carrier. (Emphasis ours.)"

In light of the constant reference in 29 (e) of the Agreement to regular relief employees it would be a completely strained interpretation of the Agreement to hold that suddenly in the one sentence of 29 (e) (4) the parties suddenly were referring to anyone other than regular relief employees. Further, in light of the additional benefits awarded regular relief employees it would be natural that the Company would contend and negotiate that they were not also entitled to deadhead pay.

As Rule 14 provides for deadheading pay for extra employees and as the Referee holds that Rule 29 (e) is applicable to regular relief employees it stands that the claim should be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1961.