Award No. 13151
Docket No. TE-12213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central of Georgia Railway, that:

1. The Carrier violated the terms of the parties' agreement when it failed and refused to pay Extra Agent-Operator C. B. Parker an arbitrary deadhead allowance of two (2) hours for deadheading from his home station Atlanta, Georgia to protect work at Army Depot (Station) Georgia on September 21, 1959.

2. The Carrier shall, because of the violation set out in Item 1 above, pay C. B. Parker the two (2) hour deadhead allowance as provided by Rule 12, and the interpretations thereof.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective October 31, 1959, and as otherwise amended.

At page 47 of said agreement, the wage schedule, is listed the position existing at Army Depot, Georgia on the effective date of said agreement. The listing reads:

MACON DIVISION

Location	Position	Rate Per Hour
Army Depot, Ga.	Agent-Operator	$2.298

The Official Guide of the Railways, current edition (September, 1960), at page 576 is shown timetable No. 1, Central of Georgia Railway. This timetable reflects, in part, the following timetable information:

TABLE 1

ATLANTA, MACON AND SAVANNAH

Terminal Station

Award 7365 (Referee Rader)

Award 7362 (Referee Larkin)

Award 7353 (Referee Rader)

Award 7180 (Referee Cluster)

Award 7179 (Referee Cluster)

Award 6964 (Referee Rader)

Award 6748 (Referee Parker)

Award 6734 (Referee Parker)

Award 6725 (Referee Donaldson)

Award 6673 (Referee Robertson)

and many others. **The Employes to date have not sustained the burden of proof.**

The Employes are here attempting to gain, by a favorable award, an **amended rule.** That the Board does **not** have authority to grant such a rule is clearly evident because the Railway Labor Act restricts the Board's authority to deciding

> "* * * disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." (Section 3 First (i).)

Thus the only way the claim here involved can be sustained would be for the Board to disregard the contract between the parties and make an award imposing upon the Carrier conditions of employment and obligations with respect thereto **not** agreed upon between the parties by following the processes of the Railway Labor Act. The Board has heretofore held that it would not take such action.

CONCLUSION

Carrier has conclusively shown that

(1) The effective Agreement does **not** substantiate the claim;

(2) The parties should unquestionably be bound by the construction which they have mutually placed on the Agreement in general, and Rule 12 in particular, over a long period of time;

(3) The Board is without authority to grant the **new or amended rule** here demanded, and has so recognized in numerous prior awards.

Therefore, the claim should be denied by the Board.

OPINION OF BOARD: The Petitioner in this case was called to fill the position of Agent-Operator at Army Depot, Georgia, beginning on Monday, August 24th and continuing through Friday, September 4, 1959. The regular Agent-Operator at Army Depot requested two weeks' vacation, and Petitioner, a resident of Atlanta, Georgia, was called to Army Depot to relieve

him. The Petitioner's home station is Atlanta, Georgia. The claim is for an arbitrary allowance, which Petitioner contends is consonant with the provisions of Rule 12. The Carrier on the contrary alleges that Army Depot has always been considered as being within the Atlanta Terminal, and hence for all intents and purposes, is considered as the home station of the Petitioner. The Carrier further alleges that the "past practice" doctrine is applicable to the instant dispute, stating essentially that no other claims have been submitted based on similar factual situations, and that as a consequence, this is indicative of a mutually agreed upon interpretation of the rule, which must in view thereof preclude a sustaining award.

The pertinent portion of Rule 12 (e) is quoted:

> "When an employe has been called at his home station to protect work at other stations or places, he shall be paid an arbitrary of two (2) hours' waiting time occurring immediately preceding departure of the first available train going to his assignment, plus any additional waiting time in connection with delayed trains. This interpretation applies only to waiting time on the initial going trip from home station."

The crux of this case turns precisely on what constitutes the employe's home station. Does it in this case mean the immediate geographical confines of Atlanta proper, or does it encompass within its meaning the larger metropolitan surrounding environs of Atlanta, as the Carrier contends? Both the Organization and the Carrier agree that the Petitioner's home station is Atlanta, Georgia, but they disagree as to the specific geographical area involved.

The Carrier's timetable listing of stations indicates that Army Depot station is 13.9 miles from the Atlanta passenger terminal, and also that there are four station locations between the Atlanta Terminal and Army Depot. At two of the four stations, namely, East Point, Georgia and Hapeville, Georgia, positions subject to the Telegraphers' Agreement are maintained by the Carrier. The Organization contends through-out the record that the Petitioner's home station is Atlanta, Georgia and that by Atlanta, they mean the narrower geographical confines of the City. Army Depot therefore is another station. An examination of the record in this case, specifically page 2 of the employes' submission is quoted in part:

> "C. B. Parker, claimant in this dispute, subsequent to his displacement as the regularly assigned agent-operator at Army Depot, Georgia, assumed his place on the telegraphers' extra board and thereafter worked as an extra telegrapher in accordance with applicable rules of the parties' agreement. Prior and subsequent to his status as an extra telegrapher, his home station was Atlanta, Georgia."

This appears to be an admission against interest on the part of the Organization. They are saying in effect that the Claimant, while stationed at Army Depot, considered his home station to be Atlanta, Georgia, that is the larger metropolitan area, not the narrow confines of Atlanta proper. In the instant case, they maintain that the Petitioner's home station is still Atlanta, but by definition they mean the city proper.

The Petitioner in this case resides near the edge of the city limits of Atlanta, adjacent to the community of East Point, which is roughly six miles from the Atlanta passenger terminal and 7.9 miles from the Army Depot.

In consideration of the factual situation involved in this case, it is our belief that the Carrier is correct when it asserts that the stations, as shown on the timetable between Atlanta passenger terminal and Army Depot, have always been considered as being within the "broader, metropolitan area" of Atlanta, and that they are in fact as one, hence the home station of the Petitioner. If we were to agree with the Organization's position on this matter, it would mean that if Petitioner were assigned to East Point, a short distance from his home, or to Hapeville, he would be perfectly within his rights to file for an arbitrary allowance. We do not believe that such a strained construction was contemplated by the contracting parties when the collective bargaining agreement was signed. It is our judgment therefore that Army Depot, is part of the Atlanta, Georgia home station, and that as such Petitioner is not entitled to the arbitrary allowance. The Claim will be denied.

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;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.