

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

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

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to compensate extra telegrapher C. E. Swinger for the time required to return to his headquarter station at Wabash, Indiana, from an assignment at Peru, Indiana, on February 21, 1960, when ordered to deadhead by the company.

2. The Carrier shall, because of the violation set out in item 1 of this statement of claim, compensate C. E. Swinger a minimum of three (3) hours' pay at the rate of \$2.21 per hour in accordance with the provisions of Rule 9 (b).

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended.

Extra Telegrapher C. E. Swinger, hereinafter referred to as claimant, was on the date of the incident precipitating this dispute, regularly assigned telegrapher on the second shift telegrapher position at Wabash, Indiana, a position which he had secured under bulletin and seniority rules while working as an extra telegrapher on the second shift telegrapher position at Peru, Indiana. He had not, however, on the date involved in this dispute, assumed the second shift position at Wabash but continued in his status as an extra telegrapher while occupying the second shift at Peru, Indiana. As an extra telegrapher his headquarter station was Wabash, Indiana.

On a date not shown in the record but sometime prior to January 20, 1960, the Carrier had ordered the claimant to fill a temporary vacancy on the second shift telegrapher's position at Peru, Indiana, commencing January 20, 1960. His assigned hours at Peru were 3 P. M. to 11 P. M., work week Wednesday thru Sunday, rest days Monday and Tuesday.

The deadhead rule — Rule 9, paragraph (b), continued unchanged, except for rate of pay, since December 1, 1922, in the following:

Telegraphers' Schedule, effective January 1, 1924

Telegraphers' Schedule, effective January 1, 1925

Telegraphers' Schedule, effective January 1, 1926

Telegraphers' Schedule, effective October 16, 1927

Telegraphers' Agreement, effective November 1, 1946

Telegraphers' Agreement, effective September 1, 1955

Rule 9, paragraph (b) of the telegraphers' agreement has continued unchanged, except for rate of pay, since December 1, 1922. No record of any instance of a telegrapher having heretofore claimed deadhead allowance back to his headquarters when he left an uncompleted temporary vacancy as the result of exercising his seniority, or of any deadhead allowances having been made under such circumstances have been found and the Committee in its handling of this case on the property has not made any reference to any such allowance having previously been made.

The deadhead trip for which claim is here made was made by Mr. Swinger as a result of his exercise of his seniority, not "by order of the Company".

The Petitioner is attempting through the medium of an award by this Division to enlarge upon the provisions of Rule 9, paragraph (b) of the telegraphers' agreement to provide deadhead compensation for employees included within the scope of the agreement regardless of whether or not trips are by order of the Company and thereby obtain a new rule without resort to the necessary procedure provided for and required by the Railway Labor Act.

The National Railroad Adjustment Board, Third Division, is without jurisdiction to amend, promulgate or grant rules and the contention of the Committee should be dismissed and the claims denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Swinger was an extra telegrapher, with headquarters at Wabash, Indiana, on January 19, 1960. On that date he received the following message:

"C. E. Swinger protect 2nd trick Peru 3 PM Jan 20th until further notice."

He deadheaded from Wabash to Peru on January 20, 1960 and covered his assignment. On February 14, 1960 he was advised that he was the Senior Bidder on Permanent Vacancy 2nd Trick Vacancy Telegrapher-Clerk at Wabash, Indiana. He requested that he be allowed to commence work on his regular assignment February 23, 1960, which request was granted. He continued to work on the temporary position through Sunday, February 21, 1960. Work on the temporary vacancy continued until March 27, 1960, at which time the position was regularly assigned to a Mr. R. L. Rose.

This claim is presented for deadhead compensation for the time required to return from the temporary position at Peru, to Claimant's headquarters at Wabash, on February 21, 1960. The Organization argues that this travel was incident to his extra assignment and not to his regular position.

Carrier argues first, that when Claimant accepted the regular position, he became a regular employee, and was no longer to be considered an extra employee, eligible for deadhead compensation. We reject this line of argument. This Board has held in many cases that an employee does not become a regularly assigned employee until he actually begins work on his first tour of duty, on his regularly assigned position.

The rule upon which Claimant relies, is as follows:

"RULE 9 (b)

"Employees deadheading by order of the Company will be allowed one dollar sixty-six and one-half cents (\$1.66½) per hour for time required by train to make the deadhead trip and return to their headquarters with a minimum of three (3) hours for each trip."

In Award 13132 we commented on this rule as follows:

"We believe that an order to perform work away from an employee's headquarters, implicitly contains an order to deadhead. As a general rule, this would mean, that the employee would deadhead both to his place of work and back to his headquarters."

We are of the opinion that if the Claimant had finished his temporary assignment and was going to his regular assignment, he would be entitled to the compensation claimed.

However, in this case, a different situation is presented. The Claimant in effect, abandoned his temporary assignment in favor of a regular assignment. He had been ordered by the Company to protect the temporary vacancy, "until further notice."

When he became the successful bidder for the regular position, it was necessary to have another extra employee complete the remaining duties at the temporary assignment. This would indicate that Claimant's actions could hardly be considered, "by order of the company", as contemplated in the rule relied upon. Therefore, we are of the opinion that this claim should 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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1965.