Award No. 13257
Docket No. TE-12652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

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

1. S. T. Zelinsky, extra operator, was ordered to work at the following listed locations, and filed claim for deadheading and waiting time in accordance with Regulation 4-L-1 and was denied. Claimant should be allowed traveling and waiting time as listed below:

12-28-59 Norris	Opr. 11.00 PM-7.00AM	6' 30"	going and return
12-30-59 N.Phila.	Opr. 11.30 PM-7.30AM	5'	return trip
1- 3-60 N.Phila.	Opr. 11.30 PM-7.30AM	2'	going trip
1- 4-60 N.Phila.	Opr. 11.30 PM-7.30AM	5'	return trip
1- 5-60 N.Phila.	Opr. 11.30 PM-7.30AM	4'	going trip
1- 7-60 N.Phila.	Opr. 11.30 PM-7.30AM	5'	return trip
1-11-60 N.Phila.	Lev. 11.00 PM-7.00AM	6' 30"	going and return
1-12-60 Norris	Opr. 11.00 PM-7.00AM	3'	return trip
1-14-60 Norris	Opr. 11.00 PM-7.00AM	6' 30"	going and return
1-16-60 Norris	Opr. 11.00 PM-7.00AM	3' 30"	going trip
1-19-60 Norris	Opr. 11.00 PM-7.00AM	3'	return trip
1-21-60 Penn.	Lev. 11.00 PM-7.00AM	9'	going and return
1-22-60 Norris	Opr. 11.00 PM-7.00AM	3' 30"	going trip
1-23-60 Norris	Opr. 11.00 PM-7.00AM	3'	return trip
1-25-60 Norris	Opr. 11.00 PM-7.00AM	3' 30"	going trip
1-26-60 Norris	Opr. 11.00 PM-7.00AM	3'	return trip
1-29-60 Norris	Opr. 11.00 PM-7.00AM	3' 30"	going trip

2. Claims should be paid in accordance with Regulation 4-L-1.

EMPLOYES' STATEMENT OF FACTS:. Claimant S. T. Zelinsky, was an extra Group 2 Operator when he received the following letter from his immediate Carrier superior:

The Carrier submits that even if it should be decided that, contrary to the evidence presented by the Carrier, there was merit to the instant claim, the Claimant would not, by the Employes' own reasoning, be entitled to such compensation.

In this respect, it must be emphasized that the Employes have contended that the headquarters for an extra employe is the passenger station nearest his home. Under such reasoning, the Claimant's headquarters would have had to be considered as Norristown, Pa., because the Carrier has maintained no passenger station at Pottsville since August 21, 1941, and Norristown was, therefore, the nearest station to Pottsville. Under such circumstances, the Claimant would be entitled to no payment under Regulation 4-L-1, because the travel time between Norristown and Penn (30th Street Station) and North Philadelphia could not possibly exceed two hours.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that its action here complained of is not prohibited by any provisions of the applicable Agreement, and that the Claimant is not entitled to the compensation claimed.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties to this controversy have agreed upon the following:

"JOINT STATEMENT OF AGREED UPON FACTS: S. T. Zelinsky resided in Pottsville, Pa. when he entered the service on the Pennsylvania Railroad on January 14, 1952 as an extra block operator. He was assigned to work in the towers of Phoenizville, Carbon and Reading until these towers were abolished. With the closing of these towers, claimant was assigned to extra work in the Philadelphia area. Mileage was allowed by the company for a period in

1957. After the company discontinued mileage payments, deadheading was allowed from 1958 until December 31, 1959 according to Regulation 4-L-1, but was discontinued on that date. Claimant still lives in Pottsville, Pa., and works exclusively in the Phila. area, travelling to and from work via the Reading Railroad."

Regulation 4-L-1 of the effective Agreement reads, as follows:

"An extra Group 2 employe, or a substitute Agent, required to deadhead to perform service shall be paid for all time travelling and waiting in the seniority district in which employed only on initial going and final return trip, at one-half (½) straight time rate of the position worked, provided such travelling and waiting on the initial trip consumes more than two (2) hours and the final trip consumes more than two (2) hours."

It is the contention of the Claimant that:

"The present Telegraphers Agreement, effective Sept. 1, 1949, does not provide for the establishment of a headquarters for extra Group 2 employees or substitute Agents.

"Since there is no provision in the Telegraphers current agreement for the establishment of a headquarters for these employees, and certainly no provision for changing these headquarters which were never established, we must refer to the traditionally accepted practice of allowing deadheading for an extra employee from the closest passenger, freight or block station to his home. The home of S. T. Zelinsky, who resided in Pottsville, Pa., when he entered service of the carrier on Jan. 14, 1952, is still Pottsville, Pa., and the closes station to his home is in Pottsville, Pa.

"The only regulation in the present Telegraphers Agreement wherein the word 'headquarters' is mentioned is Reg. 4-R-1. This regulation provides for the payment to a regular employee of traveling time and expenses incurred while working temporarily away from his headquarters. . . .

"The logical implication of paragraph (f) is that this rule does not apply to an extra employee or to a substitute Agent because he does not have an established headquarters. . . .

" 'Headquarters' then is a term applied to a position held by a regular employee. It does not apply to an extra employee or to a substitute Agent, since these employees hold no position. It can find no place, therefore, in a rule which applies only to extra employees, and was therefore omitted from Reg. 4-L-1."

Carrier rebuts the contentions of Claimant, as follows:

"It has been the practice in the past to recognize the station nearest the employe's home as his headquarters in the absence of an assigned headquarters for the extra list for the purpose of computing traveling and waiting time under Regulation 4-L-1. That the term 'headquarters' applies to extra employes is certainly evidenced by the fact that the location of such headquarters has been the matter of controversy in previous cases. . . .

"It is our opinion that the term 'headquarters' is properly connected with Regulation 4-L-1 regardless of the fact that it is not mentioned in it, and that it is within the prerogative of management to establish headquarters for the extra list of Block Operators, as was done in the Philadelphia District.

* * * * *

"It is our contention, therefore, that the claimant's headquarters were properly assigned as 30th St. Station, Phila. and that he is not entitled to traveling and waiting time as listed in the claim since the time spent traveling from his headquarters to the assigned positions would not exceed two hours . . ."

At the outset, it must be made clear that we are not here concerned with an ambiguity in an Agreement. It is agreed between the parties that there is nothing in the Agreement which provides for the establishment of headquarters for extra or group 2 employes — the Agreement is silent in this respect. Carrier contends, the Agreement being silent, that Carrier can establish headquarters as a managerial prerogative not having been proscribed from doing so by the Agreement. Conceding that the Agreement is silent, Claimant contends that the practice on this property for many years has been to pay extra employes required to deadhead in performing their services, to allow pay for traveling and waiting time from their homes or from the stations nearest their homes; that this practice, by virtue of its continuance over many years, has in effect established it as a right enuring to Claimant which cannot be taken away from him by the arbitrary and unilateral action of the Carrier. It is apparent from a reading of the record that there has been controversy in the past between Petitioner and this Carrier as to whether or not Carrier can unilaterally establish headquarters for extra block operators.

This is evidenced, in part, by Award No. 37 Special Board of Adjustment 310 where a dispute arose over the establishment of headquarters for all extra Block Operators on the Grand Rapids Branch of the Carrier. It is significant that this occurred as the outgrowth of Carrier's order establishing headquarters for extra block operators at Grand Rapids, Michigan, dated July 15, 1953, some six years prior to the order issued by Carrier in the instant case establishing headquarters for extra operators at the 30th Street Station, Philadelphia, Pennsylvania. The present case is not one of first impression. Whether or not we would have reached the conclusion arrived at in Award No. 37 is immaterial, nor can the present matter be disposed of by weighing the equities of the respective parties as it has long since been determined by this Board that we cannot decide claims on a purely equitable basis.

Our attention has been called to the second paragraph of the "Findings" in said Award 37 as in some way qualifying the conclusion arrived at. Insofar as we are able to ascertain this second paragraph reflects merely a finding of facts established by the record and in no way alters the conclusion arrived at. We are concerned with the conclusion that was reached in Award 37, as follows:

"Grand Rapids, Michigan is the established headquarters for all Block Operators on the Grand Rapids Branch.

* * * * *

"Under date of July 13, 1953 Carrier sent the following letter to Claimant: 'Since the preponderance of your work as an Extra Block

Operator is on the Grand Rapids Branch north of Grand Rapids, you are hereby notified that your headquarters is Grand Rapids, effective July 15, 1953.'

"Carrier's action is not prohibited by any section of the Agreement, and Organization's presentations do not prove otherwise.

"AWARD:

"Claim denied."

From an examination of the rebuttal submissions of the parties contained in this record we can well conclude that the same issues as have been raised here were presented in Award 37, Special Board of Adjustment 310. Under the prevailing rule and practice of this Board, if there is a prior award involving the same issues and between the same parties, the precedent award will be followed unless it has been found to be palpably erroneous.

That the principle enunciated in Award 37, Special Board of Adjustment 310 has been subsequently accepted by this Board is demonstrated in Award 10805 — Moore. In Award 10805 the question was raised by the Organization as to whether or not Carrier could designate a home terminal where there was nothing in the Agreement covering the subject. This question was disposed of as follows:

"We are of the opinion that Carrier had the right to designate the home terminal. See Award No. 37 of Special Board of Adjustment 310."

In the Statement of Claim, claim was made for allowance of pay on December 28 and December 30, 1959. Carrier concedes that this much of the claim is proper as the order establishing headquarters was not to become effective until January 1, 1960. We assume Carrier has already paid Claimant for those two days or will do so. With that assumption and for the reasons herein stated we must decline the balance of the claim.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1965.