

Award No. 13338

Docket No. TE-13457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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:

CLAIM NO. 1

1. Carrier violated the provisions of Rule 9 (b) of the parties' agreement when it failed and refused to compensate Extra Telegrapher S. A. Akers the deadhead allowances due him for April 22, May 20, 21 and 22, 1961.

2. Carrier shall now compensate S. A. Akers as follows:

Paris to Wentzville, three (3) hour minimum, April 22, 1961.

Wentzville to Paris, three (3) hour minimum, May 20, 1961.

Paris to Page Avenue, six (6) hours forty (40) min., May 21, 1961.

Page Avenue to Paris, five (5) hours thirty (30) min., May 21, 1961.

Paris to Luther Yard, six (6) hours five (5) min., May 22, 1961.

Luther Yard to Paris, six (6) hours five (5) min., May 22, 1961.

Total time thirty (30) hours twenty (20) minutes, less nine (9) hours paid—net due twenty-one (21) hours at \$2.27 per hour, or \$48.42.

CLAIM NO. 2

1. Carrier violated the provisions of Rule 9 (b) of the parties' agreement when it failed and refused to compensate Extra Telegrapher S. A. Akers the deadhead allowance due him for May 28, 1961.

2. Carrier shall now compensate S. A. Akers three (3) hours minimum deadhead allowance.

CLAIM NO. 3

1. Carrier violated the provisions of Rule 9 (b) of the parties' agreement when it failed and refused to compensate extra telegrapher J. E. Kirtley for deadhead service performed on June 5, 1961.

2. Carrier shall now compensate J. E. Kirtley three (3) hours minimum deadhead allowance.

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

The three claims presented to your Honorable Board for its consideration in this appeal were handled separately on the property. However, inasmuch as each of the claims present common aspects, the Employees have, in the interest of brevity and to avoid repetitious handling to the extent possible, incorporated all of the claims into this one submission.

CLAIM NO. 1

Briefly the facts in Claim No. 1 are: S. A. Akers, hereinafter referred to as claimant, is an extra telegrapher on the Moberly Division. He holds a seniority date on the seniority roster as of April 21, 1954. His headquarters station is Paris, Missouri. Moberly, Missouri, is Carrier's Division Headquarters for the Moberly Division. The train dispatcher and Superintendent maintain headquarters here. An extra board for the deployment of extra telegraphers is maintained in Moberly under the supervision of the chief train dispatcher.

On orders of Chief Train Dispatcher J. L. O'Connor, claimant protected relief position No. 6 with headquarters at Wentzville, Missouri, from Saturday, April 22, 1961, to and including Saturday, May 20, 1961.

Relief Position No. 6 works as follows:

Wentzville	Saturday	7:45 A. M. — 3:45 P. M.
Wentzville	Sunday	3:45 P. M. — 11:45 P. M.
Wentzville	Monday	3:45 P. M. — 11:45 P. M.
Truesdale	Tuesday	3:00 P. M. — 11:00 P. M.
Truesdale	Wednesday	3:00 P. M. — 11:00 P. M.
Rest Days — Thursday and Friday		

The record shows that Wentzville and Truesdale are on the 14th District of the Moberly Division, 103.5 and 88.1 rail miles, respectively, southeast of Moberly. Wentzville and Truesdale are 15.4 rail miles apart.

Again, on order of Chief Dispatcher O'Connor, claimant protected relief position No. 2 with headquarters at Page Avenue, Wellston, Missouri, for one day only on Sunday, May 21, 1961, and relief position No. 1 with headquarters at Luther Yard Office, St. Louis, Missouri, on first shift for one day, Monday May 22, 1961.

Page Avenue and Luther Yard are on the 14th District of the Moberly Division, 7.0 and 7.6 rail miles, respectively, south and southeast of Berkeley, Missouri.

Pursuant to the provisions of Rule 9 (b), claimant submitted deadhead time claims as follows:

Paris to Wentzville, 3 hours minimum for April 22, 1961.

Wentzville to Paris, 3 hours minimum May 20, 1961.

Paris to Page Avenue, 6 hours 40 minutes for May 21, 1961.

Page Avenue to Paris, 5 hours 30 minutes May 21, 1961.

Paris to Luther Yard, 6 hours 5 minutes May 22, 1961.

Luther Yard to Paris, 6 hours 5 minutes May 22, 1961.

Carrier made the following dead head allowances to claimant:

Paris to Wentzville, three (3) hours minimum April 22, 1961.

Wentzville to Page Avenue, three (3) hours minimum May 20, 1961.

Luther Yard to Paris, three (3) hours minimum May 22, 1961.

or a total of nine (9) hours.

Carrier refused to pay the balance of the deadhead claims on the ground that:

"Rule 9 (b) of the telegraphers' agreement does not grant extra telegraphers the right to deadhead to their headquarters following work on every position on which their services are required. Rule 9 (b) is a rule providing compensation for 'employees deadheading by order of the Company.' In the absence of such order the rule provides no support for the claims of Extra Telegrapher Akers."

Claim was instituted for the balance of the deadhead allowance, as itemized above, for a total of 30 hours and 20 minutes, less the nine (9) hours paid by Carrier, or a balance due of 21 hours and 20 minutes at \$2.27 per hour, total amount due being \$48.42.

Copies of all relevant correspondence exchanged between the parties during the handling of this dispute on the property are attached as ORT Exhibits 1 through 14—Claim No. 1.

CLAIM NO. 2

The facts in Claim No. 2 are: S. A. Akers, hereinafter referred to as claimant, is an extra telegrapher on the Moberly Division. He is the same claimant with the same factual background as in Claim No. 1. Rule 16 (i) of the parties' agreement reads as follows:

"Employees will not be permitted to give up regular position and go on the extra list nor to trade positions, and when assigned to a bulletined position will be required to accept it. Employees may, in case of an emergency, for a period not to exceed thirty (30) days, ex-

change positions in same office on permission of their superior officer. Junior extra employe catching temporary vacancy will hold same for five (5) days, after which he may be displaced by a senior extra employe who must make proper application to the Chief Dispatcher. This does not apply to vacancies where Auditor's check is necessary. A senior employe so exercising his seniority will not be entitled to deadhead compensation."

Pursuant to the provisions of the above rule, claimant applied to Chief Dispatcher J. L. O'Connor for permission to displace Junior Telegrapher F. P. Vanderpool who was working relief position No. 10 at Mexico, Missouri, and who had completed five (5) days or more on the assignment.

In accordance with claimant's request and as provided for by the rule, Chief Train Dispatcher O'Connor issued the necessary instructions permitting claimant to displace F. P. Vanderpool from relief position No. 10 at Mexico. This the claimant did commencing Tuesday, May 23, 1961.

On May 18, 1961, in accordance with the provisions of Rule 16 (i), Carrier bulletined relief position No. 10, account illness of regular occupant. Extra Telegrapher F. P. Vanderpool being the successful bidder for the temporary vacancy, was assigned to the position and commenced work thereon at 7:00 A. M., Monday, May 29, 1961.

Thus we find that claimant worked relief position No. 10 at Mexico, Missouri, from May 23, 1961, the date of his displacement of Vanderpool to and including May 28, 1961. At the completion of his (claimant's) tour of duty on May 28, he received instructions from Chief Train Dispatcher O'Connor that Telegrapher Vanderpool would protect the assignment on the following date, he now being the owner of the position. On receipt of this advice, claimant deadheaded from Mexico, Missouri to his headquarters station at Paris, Missouri, for which he turned in a deadhead time allowance (time report No. 25) claiming three (3) hours, the minimum allowed under the rule, for the return deadhead trip to his headquarters station. Carrier disallowed the claim on the ground that:

"Your time slip No. 25 dated May 28, 1961, declined account not authorized by Telegraphers schedule account you displaced Extra Telegrapher F. P. Vanderpool on Relief Position No. 10, Mexico."

Formal claim for the amount due was instituted by District Chairman R. T. Hannah on June 23, 1961, and thereafter handled on the property up to and including the highest officer designated by Carrier. Copies of all relevant correspondence had between the parties during the handling of this claim on the property are attached as ORT Exhibits Nos. 1 through 10—Claim No. 2.

CLAIM NO. 3

The facts here are: J. E. Kirtley, hereinafter referred to as claimant, is an extra telegrapher on the Moberly Division. His headquarters station is Huntsville, Missouri. On June 3, 1961, in accordance with the provisions of Rule 16 (i), claimant applied to Chief Dispatcher O'Connor at Moberly for permission to displace Extra Telegrapher D. W. Kessler on a vacation relief assignment at Brunswick, Missouri. Pursuant to the claimant's request, Chief Dispatcher O'Connor under date of June 3, 1961, issued the following wire instructions:

Wire 3:42 P. M.
Opr Kirtley — Salisbury

"Moberly June 3, 1961

Opr Kirtley displaces Opr Kessler at Brunswick and will protect the position 10:30 A. M. Sunday, June 4.

/s/ JLO"

In accordance with Carrier's instructions, as set out above, claimant protected the Brunswick vacation vacancy on June 4 and 5, following which he received notice that the regular occupant of the position would resume it on June 8, 1961, which would release claimant to deadhead to his headquarters station at Huntsville, Missouri. In accordance with the provisions of Rule 9 (b), Claimant submitted time report No. 5 to the Chief Dispatcher for payment of deadhead time Brunswick to Huntsville. The Chief Dispatcher rejected claim on the ground that it was "not authorized by Telegraphers' Schedule since you exercised your seniority to displace Extra Telegrapher Kessler at Brunswick."

Copies of all relevant correspondence exchanged between the parties during the handling of this dispute on the property are attached as ORT Exhibits Nos. 1 through 13 — Claim No. 3.

The foregoing attest that each of the claims involved in this submission has been handled on the property in the manner prescribed by law and the rules of procedure of your Honorable Board but failed of settlement. They are, therefore, appealed to your Honorable Board for adjudication.

POSITION OF EMPLOYEES: In the file we will collectively discuss the three disputes incorporated into this appeal. This expediency is resorted to first and foremost to reduce to the extent possible the repetitious handling of the disputes wherein the cause of action, rules involved and the respective positions of the parties is essentially the same.

Basically, these disputes come to your Board because the parties to the agreement are in disagreement as to the meaning of Rule 9 (b). Short of all extraneous and immaterial issues, the Carrier's contention is, and we quote:

"Rule 9 (b) of the Telegraphers' Agreement does not grant extra telegraphers the right to deadhead to their headquarters following work on every position on which their services are required. Rule 9 (b) is the rule providing compensation for employes deadheading by order of the company. 'In the absence of such order the rule provides no support for the claims of Extra Telegrapher Akers.'" (See Exhibit 13, page 2 — Claim No. 1)

The Carrier also questions the propriety of claim in Claim No. 1 on the ground that:

"Mr. Akers * * * did not actually travel between those points but nevertheless claimed deadhead allowances therefor on those time reports as instructed by District Chairman R. T. Hannah."

And finally, Carrier contends (Claims 2 and 3) that:

"The deadhead for which claim was made by Mr. Akers (Claim No. 2 and Mr. Kirtley in Claim No. 3) was made as a result of

" * * * it is also a well-established rule of contract construction that the re-adoption of a rule generally has the effect of re-adopting the mutual interpretation placed upon it by the parties themselves. In fact, it evidences an intent not to change the existing interpretations."

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 under the circumstances here involved when trips are not made by order of the company and to also set aside that part of Rule 16, paragraph (i) of the telegraphers' agreement which expressly provides that a senior extra employe who displaces a junior extra employe from a temporary vacancy will **not** be entitled to deadhead compensation.

This Board is without jurisdiction to amend, promulgate or grant rules, and the contention of the Committee should be dismissed and the claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD:

CLAIM NO. 1

S. A. Akers is an extra telegrapher with his headquarters at Paris, Missouri. Akers protected the relief position No. 6 at Wentzville from Saturday, April 22, 1961, to and including May 20, 1961. Then Akers, pursuant to instructions, protected the relief No. 2 at Page Avenue on Wellston on Sunday, May 21, 1961, and then relief position No. 1 at Luther Yard on May 22, 1961. Page Avenue and Luther Yard are in the 14th District of the Moberly Yard 7.0 and 7.6 rail miles respectively.

The Carrier made the following deadhead allowances:

Paris to Wentzville
Wentzville to Page Avenue
Luther Yard to Paris

As set out in Award No. 13132 and in Award 13337, where a Claimant is instructed to protect a location he is entitled to deadhead pay from his headquarters to the location he is instructed to protect. And when his assignment is ended he is entitled to deadhead pay from the position he has been protecting to his new position, or if there is no new position to deadhead pay for his return to the headquarters.

The Claimant contends for compensation for deadhead time from his headquarters to and from each new assignment, but such is not the measure of compensation.

No claim is presented for compensation for deadheading from Page Avenue to Luther Yard which is six tenths of a mile, and this has not been considered.

CLAIM NO. 2 AND 3

Under the terms of Rule 16 (i) a junior extra employe who is catching temporary vacancy will hold the same for 5 days after which he may be

displaced by a senior extra employee. Under claims 2 and 3, Claimant Akers and Claimant Kirtley did displace a junior employee. They made no claim for deadhead compensation to the place of employment, but do claim deadhead compensation from the place of employment. Rule 16 (i) in its entirety the following:

"(i) Employees will not be permitted to give up regular positions and go on the extra list nor to trade positions, and when assigned to a bulletined position will be required to accept it. Employees may, in case of an emergency, for a period not to exceed thirty (30) days, exchange position in same office on permission of their superior officer.

Junior extra employees catching temporary vacancy will hold same for five (5) days, after which he may be displaced by a senior extra employee who must make proper application to the Chief Dispatcher. This does not apply to vacancies where Auditor's check is necessary. A senior employee so exercising his seniority will not be entitled to deadhead compensation." (Emphasis ours.)

The last sentence of 16 (i) has been emphasized and seems clear. However, the Claimants assert their right to recover under the terms of Rule 9 (a). The interpretation of Rule 9 (a) is not before us except for the purpose of determining whether or not it applies where a senior employee has displaced a junior employee under the terms of 16 (i).

Rule 9 (a) provides as follows:

"Regularly assigned employees transferred by order of the company are to accept bulletined positions will be paid for time necessary to make the change on basis of position vacated."

Rule 9 (a) caption is "transfers," Rule 16 is entitled "Promotions and Rights." The provisions of Rule 16 relates specifically to rights between employees.

The Agreement between the Wabash and Telegraphers is an instrument of nearly 50 pages covering many things. Even the Rule 16 seems to cover more than one thing. Even the provisions of 16 (i) covers more than one subject matter, and could be properly paragraphed. But, the last sentence of 16 (i) which provides, "A senior employee so exercising his seniority will not be entitled to deadhead compensation", relates to senior employees exercising their seniority over junior extra employees catching temporary vacancies. The last sentence of 16 (i) is clear and explicit. This provision relates specifically to the type of act performed in this instance, the exercise of seniority rights by a senior employee over a junior employee in a particular area.

A specific provision of a contract has preference in its interpretation over a general provision. Rule 9 relates to transfers in general. Rule 16 relates to employees rights among themselves. Rule 16 sub-section (i) and more particularly the three last sentences constitute a unit which another paragraph, general by its nature, cannot overturn.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.