

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to pay extra telegrapher D. H. Sage for deadheading, Sycamore, Illinois to Lamont, Iowa, October 1, 1960, and Lamont, Iowa to DeKalb, Illinois, October 3, 1960.

2. Carrier shall now pay D. H. Sage for deadheading of 7 hours 24 minutes, Sycamore, Illinois to Lamont, Iowa, October 1, 1960, and for deadheading of 7 hours 36 minutes, Lamont, Iowa to DeKalb, Illinois, October 3, 1960.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This dispute arose out of Carrier's failure and refusal to pay D. H. Sage, an extra employe, for deadheading from Sycamore, Illinois to Lamont, Iowa on October 1, 1960, and from Lamont, Iowa to DeKalb, Illinois on October 3, 1960.

Claimant Sage finished his assignment of relieving on the position of Agent at Sycamore, Illinois on Saturday, October 1, 1960, and was instructed by Carrier to protect the position of Agent-Telegrapher at DeKalb, Illinois starting October 3, 1960. Sage deadheaded to his home station at Lamont, Iowa on October 1, 1960, after completing his tour of duty at Sycamore that day. On Monday, October 3, 1960, he deadheaded from his home station, Lamont, Iowa to DeKalb, Illinois to protect that assignment. Claimant Sage presented time slip to the Chief Dispatcher for 7 hours and 24 minutes pay for deadheading October 1 Sycamore to Lamont, and also presented time slip to the Chief Dispatcher for 7 hours and 36 minutes pay for deadheading

time to arriving time." Record shows that Claimant was instructed to deadhead from Sycamore to DeKalb; in other words, the only "deadheading on Company's business" was from Sycamore to DeKalb and not from Sycamore to Lamont to DeKalb as claimed here. **The parties are in agreement that Claimant was not instructed by Carrier to deadhead from Sycamore to Lamont, October 1, nor from Lamont to DeKalb, October 3.** Stated another way, the only "deadheading on Company's business" authorized by Carrier was from Sycamore to DeKalb. Claim contemplates that Claimant be compensated for deadheading not required by Carrier, i.e., not on Company's business and obviously is not supported by Rule 20. In view of fact the only rule cited by the Employees is Rule 20, and clearly said rule was not violated, Claimant is not entitled to compensation claimed.

Patently, claim before this Division is not supported by the contractual agreement. In this connection, attention is directed to Third Division Award 10166 reading:

"This Board has repeatedly held that unless the petitioner proves a claim and proves a definite violation of the Agreement that the award must be denied. See Awards 9565 and 9552.

It goes without saying that merely unsupported allegations do not constitute proof. See Awards 9783; 9261; 9222; 8065 and 6359."

3. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Instant 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 said Agreement, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, 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 Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto 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 any such action.

CONCLUSION

Carrier has established that there has been no violation of the applicable Agreement and that Claimant is not entitled to the compensation claimed.

Therefore, Carrier respectfully requests that this Board deny the claim of the Employees in this matter.

OPINION OF BOARD: Extra telegrapher Sage, finished his assignment of relieving on the position of Agent at Sycamore, Illinois on Saturday,

October 1, 1960. He was instructed to protect the position of Agent-Telegrapher at DeKalb, Illinois, commencing October 3, 1960. This case involves claims by Sage for pay for deadheading on October 1, 1960 from Sycamore to his home at Lamont, Iowa and for October 3, 1960, from Lamont to DeKalb, Illinois.

The Organization argues that if there is a day or more between assignments, extra employees are entitled to deadhead pay to and from their home stations.

The Carrier argues that Sage is not entitled to deadhead pay since he was instructed, before completing his relief work at Sycamore, that he was to protect the DeKalb agency. They further argue that the relief positions include the rest days of the positions, and therefore no time actually elapsed between assignments.

We are guided by our own Award No. 13132 where we said:

"We are of the opinion that if the assignment was only to perform work at a single location, with no consecutive subsequent assignment, the employee would be entitled to a deadhead allowance both to the place of the work, and back to his headquarters. Likewise, if assignments were made which were non-consecutive, we are of the opinion that deadhead allowances would be proper from the place of the last consecutive assignment to the headquarters, in each series of assignments."

The question to be decided in this case, is whether or not these assignments were consecutive. Carrier's argument in regard to the fact that Claimant was instructed to protect the second assignment, prior to completing the first relief work, is without relationship to the question involved in this case. It is important when one assignment ended and the next actually began; not when the assignment was issued. As a general rule, Carrier's second argument, that the rest days are part of the position, is well taken. But this is not necessarily controlling in considering deadhead allowances.

The purpose of deadhead pay is to compensate the extra men when they have to travel to and from assignments. A full day elapsed between the assignments in this case. It is immaterial that the particular day happened to be a rest day of the regular assignment. The fact remains that as far as this extra man is concerned; he completed one assignment on October 1, 1960, did not have an assignment October 2, 1960 and then reported to another location to commence a new assignment on October 3, 1960.

We believe that under these circumstances, the two assignments must be considered non-consecutive and the deadhead pay must be allowed as claimed.

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 violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.