Award No. 15380
Docket No. TE-13570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 compensate Extra Telegrapher J. B. Kemmerer deadheading pay to and from Waterloo, Iowa, in connection with working on the position of third shift telegrapher-leverman-clerk at Waterloo on July 29 and August 5, 1960.

2. Carrier shall pay J. B. Kemmerer two (2) hours' pay for deadheading Oelwein, Iowa to Waterloo and return, July 29, 1960 and two (2) hours' pay for deadheading Oelwein to Waterloo and return on August 5, 1960.

3. Carrier violated the Agreement between the parties when it failed and refused to pay Extra Telegrapher R. W. Gooding deadheading pay to and from his home station (Marshalltown, Iowa) in connection with working on the position of third shift telegrapher-leverman-clerk at Waterloo, Iowa, on October 28, November 18 and November 25, 1960.

4. Carrier shall pay R. W. Gooding four (4) hours' pay for each deadheading trip, Marshalltown to Waterloo and return, on October 28-29, 1960, November 18-19, 1960, and November 25-26, 1960.

5. On any dates subsequent to November 26, 1960, that extra employes are used to work on the position of third shift telegrapher-leverman-clerk at Waterloo, Carrier shall pay such extra employes for deadheading in accordance with the terms of the Agreement.

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

of the rule and thus denied the Union Pacific Railroad of the protection originally contained in Mediation Case A-2070, which is diametrically opposite of the situation on the Great Western. Consequently, there is no factual basis for statement contained in second sentence, fourth paragraph, of your letter October 30, reading 'There is no substantial difference in the two rules.'

It is my opinion, if this subject is given mature and enlightened consideration, that you will abandon the prosecution of these claims, which are so woefully lacking in merit. In any event, it appears nothing will be gained by further burdening the record in this dispute and Carrier is content to rest case on the existing record.

Yours truly,

/s/ D. K. Lawson
Vice Pres.–Personnel"

OPINION OF BOARD: Claimants herein were required to perform so-called "tag end rest day" relief service on a position at Waterloo, Iowa when there was no regular relief employe assigned on specified dates during 1960. Claimants are extra employes, who were compensated for such relief service at the pro rata rate and each now claims an additional allowance in the form of deadhead compensation.

The issue before this Division for determination is whether or not an extra employe, who is used to perform "tag end rest day" relief service at Waterloo, Iowa, pursuant to Rule 8, Section 1 (e) (6) of the Agreement between the parties, is entitled to deadhead compensation.

Petitioner relies upon the language contained in Rule 20 of the Agreement and contends that deadheading compensation is payable to extra employes whenever deadheading is required on Carrier's business, unless such compensation would serve as a duplicate payment, or an extra employe is exercising his seniority rights. Rule 20 reads as follows:

"RULE 20.

Except as otherwise provided in this agreement, extra employes deadheading on Company's business shall be paid for the actual time consumed, computed from departing time to arriving time including layover time, at the rate of position relieved, on the minute basis; such payment not to exceed eight (8) hours for each twenty-four (24) hours computed from departing time. This will not apply when deadheading exclusively within a terminal, or when payment otherwise accrues which would serve as a duplicate. Deadheading resulting from the exercise of seniority rights shall not be paid for."
(Emphasis ours.)

Petitioner further contends that the issue before us previously has been decided in our Award 10030 under an Agreement containing substantially the same applicable Rules.

Carrier contends that the first clause contained in Rule 20 is of preponderant importance and that Rule 8, Section 1 (e) (4) provides that any

employes who perform relief service under Rule 8 shall not be paid expense allowance or for deadheading. Carrier avers that applicable rules involved in our previous Award 10030 were substantially different from the controlling language found in the Agreement between the parties in the instant dispute and that said award is readily distinguishable.

The parties agree that Claimants are extra relief employes, who were required to perform rest day relief service pursuant to Rule 8, Section 1(e) (6) of the Agreement which provides as follows:

> "Where it is not practicable, because of the number of rest days involved or because of location of positions to cover all rest days on a seniority district by establishment of regular relief assignments of five (5) days, work on rest days not covered by such assignments may be performed by qualified extra men if available who will be paid pro rata rates therefore."

Rule 8, Section 1 (e) (4) in part provides:

> "Employes who perform relief service under this Rule 8 shall not be paid expense allowance or for deadheading." (Emphasis ours.)

Rule 20 commences with the clause "Except as otherwise provided in this agreement, . . .," which language constitutes a broad limitation on its applicability and subordinates the provisions for compensation contained therein to any other provisions of the Agreement concerning payment or non-payment for deadheading, including the clear and unambiguous language found in Rule 8, Section 1 (e) (4).

The record discloses that Rule 8 had its genesis in National Mediation Board Case A-2070 (July 13, 1945). Several years later the parties revised their Agreement and the present language found in both Rule 20 and Rule 8, incorporates the terms of Case A-2070.

In our Award 10030, the language of the pertinent Rule expressly stated that it was only applicable to employes holding regular relief assignments and we found it was not applicable to extra employes who had performed similar service to that involved in the instant dispute. Contrarily, the controlling language found in Rule 8, Section 1 (e) (4) of the Agreement involved in the present dispute is applicable to all employes, regular or extra, performing rest day relief service under said Rule and specifically precludes the payment of deadheading compensation to extra employes where the deadheading is for rest day relief service pursuant to Section 1 (e) (6) of Rule 8.

The Award cited and relied on by Petitioner is clearly distinguishable because of a substantial difference in the language of the applicable Rules. If we were to sustain Petitioner's contention such a determination would constitute a revision of the pertinent provisions of the Agreement by interpretation. We have no such authority. Awards 7296, 9198, 13310. Accordingly, the claim must 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 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 28th day of February 1967.

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