

Award No. 15483

Docket No. TE-12639

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, 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 Rule 23 of the Agreement between the parties when it failed to give a decision within sixty (60) days, on claims of extra telegrapher D. H. Sage, for six (6) hours deadhead pay, September 18, 1959, and for eight (8) hours deadhead pay September 21, 1959.

2. Carrier shall allow the above claims as presented.

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

Claimant D. H. Sage is an extra telegrapher on the Eastern Division (Chicago District) Seniority District of the railroad. This seniority district extends from Oelwein, Iowa (western terminus) to Chicago, Illinois (eastern terminus). An extra telegrapher is used to work a position from which the regularly assigned employee is absent from duty temporarily (on vacation, off sick, awaiting transfer, etc.) and to perform work at a place or on a position which is not a part of any regular assignment. Each extra employee designates a place as his headquarters, or home station. It is at this address that Carrier communicates with the extra employee at times he (the extra employee) is not working on an assignment.

Claimant Sage's home station is Lamont, Iowa, located 15.4 rail miles east of Oelwein, Iowa, the western terminus of the seniority district. On Friday, September 18, 1959, claimant finished an assignment relieving on the Agent-Telegrapher position at German Valley, Illinois. German Valley is located 129.5 rail miles east of Lamont, claimant's home station. Prior to completion of his duties at German Valley, Carrier (through its Chief Dispatcher) notified claimant to protect the Agent-Telegrapher position at Virgil, Illinois starting at 8:00 A. M., Monday, September 21, 1959. Virgil is located 181.8 rail miles east of Lamont, claimant's home station. German Valley and

Carrier reiterates that the claim herein is devoid of merit for reasons previously expressed and allegation contained in next last paragraph of your letter, i.e., "the claim is valid on its merits per established requirement of the Carrier and practice of more than a half century of application" clearly constitutes a rank and obvious misrepresentation, inasmuch as current Deadhead Rule 20 was initially adopted on this property effective June 1, 1948.

Insofar as recovery of overpayment of compensation to Claimant Sage is concerned, such action is abundantly supported by Third Division Awards 9117 and 9581.

Pursuant to request contained in final paragraph of your letter, subject will be docketed for further discussion at our next conference.

Yours truly,

/s/ D. K. Lawson
Vice President-
Personnel"

OPINION OF BOARD: The Organization urges that the claim be allowed as presented for the reason that the Chief Dispatcher failed to deny the claim in writing within the time limit prescribed in Rule 23 of the Agreement.

Carrier's defense is that the Chief Dispatcher's action of returning the claim to the claimant, with a statement characterized as an inquiry did not toll the time limitation.

We conclude that the claim must be allowed and a sustaining award issued.

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 18th day of April 1967.

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