

Award No. 15781
Docket No. TE-14679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha (T. C. Division-CNW) that:

1. Carrier violated the terms of an Agreement between the parties when it failed and refused to compensate Telegrapher K. O. Bjerkeset in accordance with the provisions of Rule 30 of said Agreement for deadhead service on March 15, and March 18, 1963.
2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate K. O. Bjerkeset for seven (7) hours at the current deadhead rate.
3. Carrier violated the terms of an Agreement between the parties when it failed and refused to compensate Telegrapher K. O. Bjerkeset in accordance with the provision of Rule 30 of said Agreement for deadhead service on April 12 and 15, 1963.
4. Carrier shall, because of the violation set out in paragraph 3 hereof, compensate K. O. Bjerkeset for five (5) hours and five (5) minutes at the current deadhead rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Chicago, St. Paul, Minneapolis and Omaha Railway Company (T. C. Division-CNW), hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Organization or Employees, effective March 1, 1956, and as otherwise amended.

For the record, the Chicago & North Western Railway, pursuant to an order of the Interstate Commerce Commission, now controls the operation of Carrier and again has assumed the collective bargained agreements referred to, *supra*. This accounts for the fact that the Chicago and North Western Railway is made a party to this action.

The relevant facts of these claims are simple and undisputed.

Neither the claimant nor the organization have been willing to accept this deadhead compensation, and as of the present no deadhead allowance has been made to claimant covering either of these dates.

OPINION OF BOARD: The Claimant was ordered by the Carrier to protect a vacancy at Granton, Wisconsin. The record indicates that he was released from this assignment at 5:00 P. M., Friday, March 15, 1963. There was no service available to him at Granton on Saturday, March 16, 1963. He therefore returned to his home point, Rice Lake, Wisconsin, where he remained Saturday, March 16 and Sunday, March 17th. He was then ordered by the Carrier to protect a temporary assignment at Mondovi, Wisconsin beginning Monday, March 18, 1963. The second occurrence involved in the Claim, is factually identical to the first portion of the claim as outlined above, only the places and dates being different.

Pursuant to the provisions of Rule 30 (e), Claimant submitted a request for deadhead allowance from Granton to his home point, Rice Lake for Friday, March 15 and from Rice Lake to Mondovi for Monday, March 18. The same request was submitted for the second occurrence.

Rule 30 (e) reads as follows:

"(e) When released from an assignment at any away from home point, an extra employe will be permitted to return to his home point, but if other service is available to him on the next calendar day at the same location, no dead-head allowance will be made for traveling to and from home point.

Should there be a period of twenty-five (25) hours or more between the ending of an assignment at one point and the beginning of an assignment at another point, extra employe would be permitted to return to his home point in the interim and deadhead allowance will be based as provided herein, between the two points of service."

The Carrier asserts that the Claimant is entitled only to deadhead allowance between Granton and Mondovi, and from Mason to Winter, the two points of Service as outlined in the second paragraph of Rule 30 (e). In their rebuttal statement, Carrier asserts that the Claimant was informed on both occasions on Friday that he had another assignment on Monday. Since this evidence was not submitted in Carrier's Ex parte submission, we, in accordance with other decisions of this Board, consider such evidence to be untimely and hence inadmissible.

From the facts as previously outlined, and referring to the first paragraph of rule 30 (e), it is clear that Claimant

- a - was released from an assignment at an away-from-home point.
- b - was an extra employe.
- c - was permitted to return to his home point since no service was available to him on the next calendar day at the same location.

The above conditions as contained in rule 30 (e), have been satisfied by the Claimant. That portion of rule, in and of itself, is clear and unambiguous.

Looking at the second paragraph of 30 (e), it is clear that:

a - There was a period of twenty-five (25) hours or more between the ending of an assignment at one point and the beginning of an assignment at another point.

b - Claimant was an extra employe and hence would be permitted to return to his home in the interim.

The above two conditions being satisfied, it would appear that the Claimant would be entitled to deadhead allowance between the two points of service as Carrier contends.

Taken by itself, the first paragraph of rule 30 (e) is clear and unambiguous. Taken by itself, the same can be said for the second paragraph. Neither paragraph attempts to modify or in any way to qualify, amend or change the language of the other. It would appear to us that the Claimant could have pursued his claim based on the language of the second paragraph as well as the first paragraph. It is simply optional for him to choose one or the other. He chose the first and having satisfied its terms, he is entitled to the allowance 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 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 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 28th day of July 1967.

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