Award No. 15831
Docket No. TE-14439

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Duluth, Missabe & Iron Range Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate Extra Telegrapher A. W. Suihkonen for deadheading between Mountain Iron and Mitchell, Minnesota on February 3 and April 18, 1962.

2. Carrier shall now compensate A. W. Suihkonen in the amount of three (3) hours' pay for deadheading February 3 and April 18, 1962 (total $7.50).

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1953, with its supplements and amendments, are available to your Board and by this reference are made a part hereof.

At time of claim, A. W. Suihkonen was an extra employe residing at Mountain Iron, Minnesota. Mr. Suihkonen was instructed by the Carrier to relieve on a position of Telegrapher at Mitchell, Minnesota, for one day, February 3, 1962, which he did. Mr. Suihkonen was later instructed to work on a Telegrapher position at Mitchell starting on April 18, 1962, and to possibly remain at Mitchell for the ore movement season.

Claimant Suihkonen first submitted his claim for pay for deadheading on February 3, 1962, as applying from and to Duluth, Minnesota, rather than from and to Mountain Iron, Minnesota, where he resides. Carrier's payroll accountant and/or Chief Dispatcher instructed Claimant Suihkonen to claim his pay for deadheading from and to Mountain Iron (his place of residence) and it would be paid. Mr. Suihkonen revised his claim accordingly on April 2, 1962, claiming a total of two hours' pay for deadheading February 3, 1962, to Mitchell from Mountain Iron, and to Mountain Iron from Mitchell. On May 24, 1962, Mr. Suihkonen presented claim to the payroll accountant for one hour's pay for deadheading April 18, 1962, from Mountain Iron to Mitchell. The payroll accountant refused to allow claim for both dates on June 15, 1962.

OPINION OF BOARD: Claimant, a resident of Mountain Iron, Minnesota, was called as an extra employe by Carrier to work at Mitchell, Minnesota on February 3 and April 18, 1962. Claimant traveled directly to Mitchell, Minnesota from his home at Mountain Iron, Minnesota on both dates involved in this dispute. On May 24, 1962, he addressed a letter to Carrier's Payroll Accountant requesting information concerning Carrier's failure to pay him deadhead time in accordance with Article 19 of the Agreement between the parties. On June 15, 1962 the Payroll Accountant replied to Claimant's letter advising him that deadhead allowance was not applicable to the dates in question under the provisions of Article 19 of the Agreement.

Petitioner's General Chairman addressed a letter to Carrier's Payroll Accountant, dated June 30, 1962, which referred to Claimant's inquiry and in part stated as follows:

> ". . . This is to advise you that I reject your refusal and further action will be taken . . ."

On August 7, 1962, Petitioner's General Chairman presented Claimant's case to Carrier's General Superintendent, who thereafter replied on August 14, 1962, that Carrier had no record of having received a claim from Claimant for deadhead allowance on February 3, 1962 and April 18, 1962, and that time for filing a claim had expired under Article V of the National Agreement of August 21, 1964.

Initially, Carrier requests that the Claim be dismissed because no bona-fide claim was filed by Claimant with the officer of the Carrier authorized to receive same within sixty (60) days of the occurrence on which the grievance is based as required under the provisions of Article V(a) of the National Agreement of August 21, 1964.

There is no question that Claimant's initial letter of May 24, 1962 to Carrier's Payroll Accountant was written more than sixty (60) days after February 3, 1962, the first claim date involved in this dispute, and consequently, any claim for said date is barred under the terms of Article V of the National Time Limit Agreement.

Although Claimant's letter of May 24, 1962 is couched in language less adamant than a formal demand, the full text of said letter clearly expresses Claimant's contention that he was entitled to deadhead compensation under a specific Rule of the Agreement (Article 19), and that he expects payment from the Carrier. Furthermore, the response of Carrier's Payroll Accountant expressed Carrier's position concerning the application of Article 19. Prior awards cited by Carrier in support of its position that Claimant's letter of May 24, 1962 does not constitute a valid claim are readily distinguishable.

In view of our conclusion that Claimant's letter, dated May 24, 1962, constitutes a valid claim for the remaining claim date (April 18, 1962) it necessarily follows that the appeal filed with Carrier on August 7, 1962 by Petitioner's General Chairman was timely under the provisions of Article V(b) of the National Time Limit Agreement, as it was submitted in writing within 60 days from receipt of Carrier's notice of disallowance dated June 15, 1962.

The pivotal rule involved in this dispute is Article 19, which reads as follows:

"ARTICLE 19. DEADHEADING

(a) Extra employes shall be furnished transportation or reimbursed for transportation expense, and paid for actual time consumed in deadheading to and from positions and headquarters, when instructed by proper authority. The deadhead rate will be the rate of the position relieved, with a minimum of one (1) hour. Deadhead time will start at the time the employe leaves the headquarters or the location of the position worked.

(b) This Article will not apply when required to travel within the city limits of Duluth, or between Duluth and Proctor."

Petitioner contends that Claimant under Article 19 of the Agreement is entitled to be paid for actual time consumed in deadheading to the location of the extra position from his home, which Petitioner asserts is also his "headquarters" under said article.

Carrier contends that an extra employe, such as Claimant, must actually deadhead from his established "headquarters" to the extra position to be eligible for deadhead allowance and that Article 19 does not provide for deadhead allowances from Claimant's "home" to the location of the extra position.

Carrier offered undisputed evidence that Duluth, Minnesota has been considered the headquarter point of the telegraphers' extra board, which is maintained in the Chief Dispatcher's office at Duluth, Minnesota. Furthermore, Carrier submitted in evidence a copy of the General Chairman's letter dated December 11, 1961 to Carrier requesting a change in the deadhead rule because of dissatisfaction with the manner in which Telegraphers were being paid mileage allowances when traveling directly from their homes to extra positions without first reporting to headquarters at Duluth. Thereafter, the parties negotiated a new provision which now provides two specific headquarter points, but does not provide for deadheading from an employe's home to an extra position.

Petitioner has offered no probative evidence to support the assertion that the parties have previously construed the term "headquarters" to mean an extra employe's "home" for the purpose of qualifying for deadhead allowance when traveling directly from such employe's home to an extra position.

Carrier denies such previous interpretation of the term "headquarters," and the record fails to disclose any probative evidence that Carrier has allowed deadhead time under Article 19 to employes traveling between their homes and extra positions. This Board has held in numerous awards that the moving party has the burden of proving the merits of a particular claim through competent evidence. (Awards 15383, 14942, 13311 and others). Article 19 does not contain specific language supporting the position of Petitioner, and no probative evidence of established practice has been presented in support of the instant claim. Therefore, we find that Petitioner has failed to satisfy its burden of proof. 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 was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1967.

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