

Award No. 16432
Docket No. TE-14891

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines), that:

1. Carrier violated the Agreement between the parties when it refused to grant free transportation to Harry M. Matheny when transferring to a position on which he held seniority rights causing him to lose a day's pay on September 15 and 23, 1962.

2. Carrier shall be required to compensate Harry M. Matheny in the amount of a day's pay on September 15 and on September 23, 1962 at the rate of his regular position.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At the time cause for this claim arose, Claimant Matheny was regularly assigned in accordance with the rules of the Agreement to a regular rest day relief position at Wells, Nevada. All the assignments in the relief cycle were classified as telegrapher-clerk-PMO-towerman. The assignments were as follows:

Friday	12:00 AM to 8:00 AM
Saturday	8:00 AM to 4:00 PM
Sunday	8:00 AM to 4:00 PM
Monday	4:00 PM to 12:00 AM
Tuesday	4:00 PM to 12:00 AM
Wednesday and Thursday	Rest Days.

This again is clear cut evidence that the claimant knew more than 24 hours in advance he was being released as train dispatcher at 7:00 A. M., September 22, and that he could have been prepared to take Train No. 21 from Ogden at 7:30 A. M. (actually departed at 8:12 A. M., 1 hour and 12 minutes after claimant released), and it was only after his refusal that the Superintendent ordered the claimant to report to his assignment at Wells 4:00 P. M. on September 24 instead of 8:00 A. M., September 23, 1962.

In accordance with Section (i) of Rule 2 of the Agreement covering train dispatchers, hereinafter quoted and discussed, Claimant was allowed a dead day, each date September 14 and 22, 1962.

5. By letters dated September 26 and October 9, 1962 (Carrier's Exhibit D), Petitioner's District Chairman submitted claim on appeal in behalf of the claimant for 8 hours' compensation at the pro rata rate of his regular assigned position at Wells on each September 15 and 23, 1962, as a consequence of not being permitted to ride Train No. 101 from Ogden to Wells on each of the preceding dates, and by letter dated October 12, 1962 (Carrier's Exhibit E), Carrier's Division Superintendent denied the claim, stating that transportation was available to the claimant via Train No. 21 on dates involved.

6. By letter dated November 14, 1962 (Carrier's Exhibit F), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated May 24, 1962 (Carrier's Exhibit G), the latter denied the claim stating that the claimant was absent of his own volition and no provision of the Telegraphers' Agreement contemplates claimant be compensated for services for which he did not avail himself.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to Relief Telegrapher-Clerk-PMO-Towerman position at Wells, Nevada, and he also was employed when needed as an extra train dispatcher at Ogden, Utah, where he maintained his family residence. On September 15 and 23, 1962, Claimant was scheduled to resume his assignment at Wells, Nevada following service as an extra dispatcher at Ogden, Utah. Claimant completed his service as an extra dispatcher at 7:00 A. M. on September 14 and 22, 1962, but refused transportation on Carrier's Train No. 21 on both dates to Wells, Nevada because said train was scheduled to leave Ogden at 7:30 A. M. and did not furnish any dining facilities. Furthermore, Claimant refused to ride a freight train to Wells, Nevada later on the same dates. Carrier denied Claimant's request that he be allowed free transportation on its passenger Train No. 101 on September 14 and 22, 1962, which is a restricted train on which employee passes are not honored without specific permission from Carrier. In view of the foregoing, Claimant was unavailable to fill his regular assignment at Wells, Nevada on either September 15, 1962 or September 23, 1963 for which he now seeks compensation from Carrier under the applicable Rules of the Telegraphers' Agreement.

In the first instance, Carrier contends that Claimant was at all times involved in this dispute regularly assigned to a relief telegrapher position at Wells, Nevada, and that he voluntarily placed himself under the control of the Dispatchers' Agreement while serving as an extra train dispatcher at Ogden, Utah on September 14 and 22, 1962, when Carriers allegedly denied him trans-

portation on Train No. 101 in violation of Rule 38 of the Telegraphers' Agreement. Moreover, the record reflects that Claimant received dead day compensation for these dates under Article 2, Section (i) of the Dispatchers' Agreement. Thus, Carrier avers that Claimant has no rights under the Telegraphers' Agreement in this dispute because he assumed full responsibility for his availability on his regular assignment when he accepted other service at a different location as an extra dispatcher.

Although we concur in Carrier's contention that Claimant was subject to the provisions of the Dispatchers' Agreement on September 14 and September 22, 1962, for which he received dead day compensation from Carrier, the instant claim alleges that Carrier refused Claimant free transportation to his regular assignment at Wells, Nevada, and that he was unavailable on the dates of claim because of Carrier's violation of the Telegraphers' Agreement. Accordingly, we find that Claimant has properly filed the instant claim under the applicable provisions of the Telegraphers' Agreement.

The record reveals that free transportation was actually offered Claimant by Carrier which he refused to accept on either September 14 or September 22, 1962, and the sole remaining question for determination is whether or not Claimant had a contractual right to refuse such transportation and demand free transportation on Carrier's Train No. 101, a restricted train requiring special permits for employees' use. Rule 38 (a) provides as follows:

"Section (a). Employees covered by this agreement and those dependent upon them for support shall be given the same consideration in granting free transportation as is granted other employees in service."

Petitioner asserts that other employees of Carrier such as engineers are permitted to use Train No. 101 for deadhead transportation from Ogden to Wells, and that Claimant has not been given the same consideration in violation of Rule 38 (a) of the Agreement. Carrier insists that permission was not granted for Claimant to ride restricted Train No. 101 because other transportation was available to him, and that engineers are permitted to deadhead from Ogden to Wells on Train No. 101 to make 7-day relief assignments at Wells only because they might not be able to report in time to assume their assignments without loss of earnings if required to use unrestricted trains.

Petitioner also urges that Carrier should have complied with its request that a joint check of Carrier's records be made to ascertain whether or not other employees had been allowed to use Train No. 101 under similar circumstances as alleged by Petitioner. Carrier denied this request as no provision of the agreement required such a joint check of records.

The applicable language in Rule 38 (a) of the Agreement merely requires Carrier to give all employees covered by the Agreement the same consideration in granting free transportation as is granted other employees in the service. The burden is upon Petitioner to show that Carrier has failed to comply with this requirement. Carrier has denied Petitioner's assertion and has offered competent evidence to support its contention that engineers are allowed to use Train No. 101 because they might otherwise be unable to report on time if required to use unrestricted trains.

No other specific examples of alleged violations by Carrier have been offered by Petitioner, nor any competent evidence to support the general assertion that Claimant was not given the same consideration as others under similar circumstances. Accordingly, the claim must be dismissed for lack of proof.

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 not violated.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.