Award No. 18135
Docket No. TE-17305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Pacific Lines), that:

CLAIM NO. 1

CAR. FILE: Tel 61-229
COM. FILE: J.521.14 (S.A. 7)

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher B. T. Robbins for the week beginning Monday, September 25, 1961 and ending with Sunday, October 1, 1961 and for the week beginning Monday, October 2, 1961 and ending with Sunday, October 8, 1961 because of using deadhead allowance in computing his forty hour guarantee.

2. Carrier shall, because of the violation set forth above, compensate B. T. Robbins for six (6) hours and thirty-five (35) minutes at the minimum telegraphers' rate on the seniority district.

CLAIM NO. 2

CAR. FILE: Tel 61-215
COM. FILE: J.517.14

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher G. D. Bennett for the week beginning Monday, October 16, 1961, and ending with Sunday, October 22, 1961, because of using deadhead allownce in computing his forty hour guarantee.

2. Carrier shall, because of the violation set forth above, compensate G. D. Bennett for eight (8) hours at the minimum telegraphers' rate on the seniority district.

CLAIM NO. 3

CAR. FILE: Tel. 61-219
COM. FILE: A.442.3

1. Carrier violated the provisions of the October 29, 1961 Mediation Agreement between the parties when it failed to properly compensate Extra Telegrapher C. T. Carter for the week beginning Monday, October 16, 1961 and ending with Sunday, October 22, 1961; Extra Telegrapher E. E. Kline for the week beginning Monday, January 1, 1962 and ending with Sunday, January 7, 1962; Extra Telegrapher E. E. Kline for the week beginning Monday, January 8, 1962, and ending with Sunday, January 14, 1962; and Extra Telegrapher G. R. Swanson for the week beginning Monday, January 1, 1962, and ending with Sunday, January 7, 1962 because of using deadhead allowance in computing the forty hour guarantee for extra employes.

2. (a) Carrier shall, because of the violation set forth above, compensate C. T. Carter for eight hours at the minimum telegraphers' rate on the seniority district for the week ending Sunday, October 22, 1961.

(b) Carrier shall, because of the violation set forth above, compensate E. E. Kline for six hours and thirty minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 7, 1962.

(c) Carrier shall because of the violation set forth above, compensate E. E. Kline for forty-five (45) minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 14, 1962.

(d) Carrier shall, because of the violation set forth in paragraph 1 hereof, compensate G. R. Swanson for thirteen (13) hours and thirty (30) minutes at the minimum telegraphers' rate on the seniority district, for the week ending Sunday, January 7, 1962.

CLAIM NO. 4

CAR. FILE: Tel 61-234
COM. FILE: A.445.3

1. Carrier violated and continues to violate an Agreement between the parties hereto when it includes deadhead allowance in its computation of the guarantee of forty (40) hours a week for extra employes provided for in paragraph 7 of the October 29, 1961 Mediation Agreement.

2. Carrier shall be required to compensate each extra employe a minimum of forty (40) hours each week, Monday through Sunday, excluding allowances for deadheading, commencing Monday, September 18, 1961, and continuing thereafter until the violations are corrected.

3. Extra employes on the Portland Division as of September 18, 1961 were:

S. Diamond	W. W. Jensen
I. J. Frininger	C. T. Carter
L. F. Gallegos	E. E. Kline
C. L. Wise	R. E. Buike
J. E. Girard	T. I. Patterson
G. R. Swanson	A. C. Quinelle
B. J. Darby	G. N. Lindbeck
F. M. Sweet	T. B. Wong
R. J. Gordon	W. D. Holsheimer
I. E. Green	E. W. McArdle

4. In addition to the extra employes shown above, the Carrier shall compensate each extra employe a minimum of forty (40) hours each week, Monday through Sunday, excluding allowances for deadheading, subsequent to September 18, 1961, account reduction in the number of positions, or because the employe reverts to the extra list.

5. Permit and cooperate in a joint check of the Carrier's records to determine the facts in any dispute of facts which may develop in the course of final settlement of these claims but not limited to the determination of the identity of claimants not listed by name in the foregoing and the amounts due each claimant.

EMPLOYES' STATEMENT OF FACTS: The claims in these cases are based upon the provisions of an Agreement effective December 1, 1944, as amended and supplemented, and more specifically the Memorandum of Agreement effective October 29, 1961, made between the Southern Pacific Company (Pacific Lines), hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, now renamed the Transportation-Communication Employees Union, hereinafter referred to as Employes and/or Union. Copies of said Agreements are on file with your Board and are, by this reference, made a part of this Statement of Facts.

The four (4) claims incorporated into this appeal to your Board were handled separately on the property. The National Agreement of August 21, 1954 sets out the procedures and time limitations for the presentation and the processing of claims and grievances. There is nothing in that Agreement which prohibits the Employes from merging several claims between the same parties, arising out of the same Agreement involving identical issues, providing each of the claims are presented within the time limits provided in Section 1(a) of Article V thereof, and provided that the claims are presented in accordance with other provisions of the Agreement. Such procedure has been validated by your Board in numerous awards, among which are: Awards 12424 (Dorsey), 11300 (Moore), 11174 and 11120 (Dolnick), 10619 (LaBelle), 4821 (Carter).

Because of the long delay in submitting these unadjusted disputes to your Honorable Board, some explanation is in order. It might appear at first blush that uncertainty as to the validity of the claims was a factor in not seeking quick relief. However, this is not the case. When the parties

Claim No. 3	(1) Compensated Hrs. For Working	(2) Compensated Hrs. For Deadheading	(3) Compensated Hrs. As Guarantee
C. T. Carter			
10/16 – 10/22/1961	32 hrs. 00 min.	10 hrs. 50 min.	None
E. E. Kline			
1/1 – 1/7/1962	24 hrs. 00 min.	6 hrs. 30 min.	9 hrs. 30 min.
1/8 – 1/14/1962	8 hrs. 00 min.	45 min.	31 hrs. 15 min.
G. R. Swanson			
1/1 – 1/7/1962	16 hrs. 00 min.	13 hrs. 30 min.	10 hrs. 30 min.

Claim No. 4 in this docket is vague and indefinite, having been submitted in continuing blanket form failing to specify particular weeks or exact amounts being claimed and (under Item 4) failing to identify claimants. There are no facts to set forth since Petitioner refused to assume its burden to establish such facts other than to show that there are twenty named claimants. In this connection it should be noted that three of the identified claimants, namely, C. T. Carter, E. E. Kline and G. R. Swanson, are claimants in Claim 3 of this docket, in which specific factual data was presented by Petitioner. In this Claim 4, however, Petitioner has improperly requested Carrier to search its records to find potential or suspected claims and develop facts for Petitioner. In view of the state of the record in Claim 4, Carrier in its position will request the Board to dismiss the claim.

Copies of correspondence exchanged between the parties during the handling of these four claims on the property are attached and identified as follows:

Claim No. 1 — Carrier's Exhibit A
Claim No. 2 — Carrier's Exhibit B
Claim No. 3 — Carrier's Exhibit C
Claim No. 4 — Carrier's Exhibit D

(Exhibits not reproduced.)

OPINION OF BOARD: The issue involved in this claim is whether or not the Carrier may deduct deadhead allowances, set forth in Rule 8 of the Labor Agreement, in the computation of the guarantee of forty (40) hours a week for extra employes under the provisions of Paragraph 7 of the Mediation Agreement between the parties effective October 29, 1961.

The Employes' position is that deadhead allowances provided for in Rule 8 are separate and apart from compensation paid for work performed and are in the nature of arbitraries, not wages, and therefore may not be used in computing time under Paragraph 7 of the Mediation Agreement. It further contends that the forty (40) hour a week guarantee in the Mediation Agreement is a guarantee of wages, and may not be offset by anything except wages.

The Carrier raises a procedural defense to the claim, asserting that the Petitioner has the burden, which it has failed to sustain, of identifying specific claimants and establishing all dates for which claim is made.

In relation to the merits of the claim, Carrier asserts that the computation of the forty (40) hour a week guarantee is not restricted only to the time paid for work, but must include all time paid for inasmuch as the parties in the Mediation Agreement did not provide therein that allowances such as deadheading was to be excluded from the computation. It further asserts that if time paid for deadheading was not deducted from the forty (40) hour a week guarantee, it would constitute duplicate payments contrary to the provisions of Paragraph 11 of the Mediation Agreement.

The Board, after careful study of the Labor Agreement, the Mediation Agreement and the Record, must conclude that the deadhead payments made to the Claimants, extra employes, cannot be regarded as time paid for in the computation of the forty (40) hour a week guarantee set forth in the Mediation Agreement of October 29, 1961.

We conclude that the wording of Paragraph 7 of the Mediation Agreement which reads: " * * * In applying this agreement to employes now holding seniority now and as of September 15, 1961, a guarantee of forty hours a week as an extra employe will be established for such employes available for work * * * " is a guarantee of forty (40) hours of work.

It is the further finding, based upon the conclusion, that deadhead payments provided for in Rule 8 of the Agreement are not wages, but are arbitraries. The provision of Paragraph 7 of the Mediation Agreement is a guarantee of wages.

Support for the conclusion herein is found in Award 16155, wherein it was held that deadhead payments cannot be included in the computation of the forty (40) hour work guarantee set forth in the Mediation Agreement between the parties in that dispute. See also Awards 11275 and 11850.

In relation to the procedural defense raised by Carrier, it is considered opinion of the Board that Claim 4 is vague and indefinite in that it fails to set forth identification of specific Claimants and specific dates on which violation is alleged to have occurred. This Board has, on numerous occasions, held that claims must be specific and not vague or indefinite, and that the burden is on the Petitioner to identify the Claimants and to present the dates relating to the claim. The mere insertion of the name of the Claimant in the claim without supporting evidence as to his claim does not meet the requirement that proper proof of the claim be submitted to entitle Claimant to affirmative relief. We find that the Employes have not sustained the burden of proof in Claim 4 and, accordingly, it must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated in accordance with the Opinion.

AWARD

Claims 1, 2 and 3 are sustained.

Claim 4 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

CARRIER MEMBERS' DISSENT TO AWARD 18135, DOCKET TE-17305

This award is an attempt to rewrite the agreement by redefining terms that are clearly defined therein and by adding words.

The award states that deadheading "cannot be regarded as time paid for". Rule 14 (d) of the agreement could not be more clear in stating that compensation for deadheading is "time paid for". This rule provides that "**time paid for** in the nature of arbitraries, extra or special allowances, such as attending court, deadheading . . ." shall not be utilized in computing the 40 straight time hours that must be earned before overtime becomes payable.

The agreement thus not only expressly indicates that compensated deadheading is "time paid for" but it also indicates that when such "time paid for" is to be excluded in any computation of hours an express exclusion is required.

Obviously, had the parties intended to exclude such "time paid for" in the computation of the income guarantee that is involved in this claim, they would have done so expressly, as they did in setting up the formula for the computation of overtime. Instead of thus excluding time paid for while deadheading, the parties expressly included all time paid for in any capacity. After guaranteeing 40 hours as an extra employe (which certainly includes hours spent in deadheading, for one does not lose his status as an extra employe while deadheading), the parties went on to say:

> "**In computing this guarantee, when time paid for as an employe** represented by the Organization or **in any** other **capacity** in any week commencing with Monday during which such an employe is available, **is less than forty hours, an additional amount of time will be paid** at minimum telegrapher-clerk rate in effect on the seniority district involved, **so that total compensation paid for will equal forty (40) hours,** except that this guarantee shall be reduced by eight 8) hours in any week for any day on which an employe does not work by reason of his failure to respond in accordance with applicable rules of existing agreements to a call on that day for work not in violation of the Hours of Service Law." (Emphasis ours.)

In view of the foregoing clear language, we respectfully submit that the Referee and Labor Members exceed their jurisdiction when they arbitrarily find that time paid for while deadheading is not time paid for; also, when they conclude that the guarantee of 40 hours is a guarantee of 40 hours of "work" or of 40 hours of "wages" under any definition that excludes deadheading.

The conclusion that Award 16155 supports the proposed award is but another admission that the agreement which the parties here adopted is not being applied; but, rather, an attempt is being made to give the Employes under this agreement the same benefits that employes of a different carrier have under a very different agreement. The forty hour guarantee rule in Award 16155 stems from an entirely different agreement, and it expressly guarantees to the employes covered thereby "forty (40) hours of work per week". Award 16155 is based on the finding that deadheading was defined in the agreement itself, as well as in our Award 11275, as not being work, but rather as being one of the activities regarded as in the nature of an arbitrary or special allowance.

We dissent to that portion of the award which purports to find a violation of the agreement.

G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White

CONCURRING OPINION, AWARD 18135, DOCKET TE-17305

The Referee logically and correctly decided the substantive issue and awarded a pitifully small minority of the claimants the reparation due for the stated periods of time. To that extent the Labor Members agree and concur.

Otherwise, however, the award is palpably in error, and we do not agree with such error.

The claim arose because the Carrier, within a week of the effective date of the agreement providing a weekly guarantee to extra employes, began considering deadhead payments to such employes to be a part of the guarantee. The effect was that the guarantee was reduced by the amount of deadhead payments made to all extra employes.

The Employes disagreed with this method of computing the guarantee, contending that the guarantee runs to wages, and that deadhead payment is an extra and special allowance for time spent in traveling in addition to wages. The claim asked that Carrier make whole every extra employe whose guarantee had been reduced by the improper computation, and that the same reparation be made to all extra employes similarly affected in the future.

The form used was the only feasible one available: Specific names and exemplary dates for occurrences that had transpired up to the current dates,

then projecting the specifics into the future as long as the violation continued.

This was a "class action", pure and simple. All members of the class of extra employes, both present and future, were affected in the same way by the Carrier's action. If that action was improper for one such employe and for one week, it was improper for all those employes and for all weeks in which it was continued.

This Board, and the courts as well, have many times held that under such circumstances a "class action" is not only proper, but desirable, so that a decision as to one is dispositive of all others, thus eliminating any need for a multitude of claims and multiple litigation.

In Award 4821, this Board long ago clearly stated the reasons for such procedure:

> "We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employes that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The Organization is authorized to represent the employes and where no prejudice arises out of group handling, we think it is entirely proper."

Others of like import, some of which cite court decisions in point, include Awards 1010, 2667, 4445, 4513, 4821, 5078, 5116, 5117, 5445, 5700, 5755, 5973 and 6167.

This documentary support for the form of the claim was presented to the Referee but was rejected, apparently in favor of another line of awards which hold that vague and indefinite claims are improper. There was nothing vague or indefinite to the prejudice of Carrier in the form of the claim here. The General Chairman was meticulously exact and specific in setting out the claimants up to the time of filing, and equally exact in projecting the specifics into the future.

Failure of the Referee to distinguish between the line of awards dealing with class actions and those rejecting vague and indefinite "fishing expeditions" constitutes palpable error. Such error will require the Employes to now file a multitude of claims, one for each extra employe every week when his guarantee is improperly computed by taking into account any deadhead payments that week, until finally the Carrier may change its methods and comply with the agreement.

An award imposing such conditions, not to mention the injury to the actual claimants here, is clearly contrary to the purpose for which this Board was created and thus requires this regrettable criticism.

C. E. Kief
Labor Member

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 18135, DOCKET TE-17305

The Carrier Members' Dissent expresses disagreement without establishing error, and amounts to nothing more than unsupported opinion. Therefore, it has no value.

The schedule agreement between these parties has provided deadhead payments to extra employes for many years prior to negotiation of the Mediation Agreement which provides a wage guarantee for such extra employes. Historically, on this property as well as all others where similar deadhead rules are in effect, deadhead payments have been made wholly in addition to the wages paid the affected employes.

When the parties negotiated a provision for a guarantee of a week's wages — whether a week's work was available or not — for such employes no change was made in the deadhead rule or practices thereunder. If such change had been intended, the language of the Mediation Agreement could and would have so stated.

The interpretation placed upon this language by Award 18135 leaves the parties precisely where they were when they agreed upon that language under the auspices of the National Mediation Board. Acceptance of the Carrier Members' viewpoint would have amounted to an attempted change in the parties' agreement.

Therefore, the Carrier Members' allegation that the Referee and Labor Members exceeded their jurisdiction is either a deliberate attempt to distort the clear meaning of the award and the facts of the procedures by which it was adopted, or is irresponsible drivel. In either case it is without substance, and leaves the award unaffected.

C. E. Kief
Labor Member

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