

Award No. 858
Docket No. SG-802

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)**

STATEMENT OF CLAIM: "Claim that all share-the-work practices must be terminated and all signal department employees restored to the regular six days per week basis of employment, and claim for all compensation lost by all affected signal department employees due to refusal of the Management to restore the regular six days per week basis of employment as of September 1, 1937, in accordance with written request made by the General Chairman."

STATEMENT OF FACTS: The statement of facts and position of the parties in this dispute are substantially identical to the facts and position as set forth by the parties in Docket SG-794, Award No. 854.

Therefore, the Board has deemed it unnecessary to quote the statements and positions of the parties in this case.

There is in existence an agreement between the parties bearing effective date of January 1, 1925.

OPINION OF BOARD: This case is similar in every respect to that involved in Docket SG-794, Award No. 854, and the conclusions and opinion set forth there are applicable in this case.

The general claim made in behalf of the employees for the restoration of the former schedule of employment of six days' work per week for all regularly assigned signal department employees will be dismissed without prejudice as to those employees holding regular assignments on positions worked less than six days per week. The claim of employees holding assignments to positions worked six days or more per week will be sustained.

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 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 general claim for the restoration of the former schedule of employment of six days' work per week for all regularly assigned Signal Department employes should be dismissed without prejudice as to employes holding regular assignments on positions worked less than six days per week and sustained as to employes holding assignments to positions worked six days or more per week; and the claim for compensation lost by employes holding assignments to positions worked six days or more per week should be sustained to the extent indicated in the Opinion.

AWARD

Claim for restoration of the former schedule of employment of six days' work per week for all regularly assigned Signal Department employes dismissed without prejudice as to employes holding regular assignments on positions worked less than six days per week and sustained as to employes holding assignments to positions worked six days or more per week; the claim for compensation lost by employes holding assignments to positions worked six days or more per week sustained to the extent indicated in the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1939.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 858
DOCKET SG-802**

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America

NAME OF CARRIER: New York Central Railroad Company
(Buffalo and East)

Upon application jointly submitted by the Carrier and the Representatives of the Employees involved in the above award, requesting that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The question submitted for interpretation is stated as follows:

In calculating retroactive pay adjustments required by the "Order to accompany Award No. 858," did the carrier comply with the requirements of the Findings and Award of the Third Division in the instances of employees who held, during the period involved in the retroactive pay adjustments, regular assignments in a higher class than their seniority would have entitled them to if 6-day assignments had actually been restored as of September 1, 1937, instead of January 1, 1938, as illustrated by the case of L. H. Warblow, who held 5-day assignment as maintainer during period of retroactive pay adjustments but could only acquire an assistant maintainer's 6-day assignment on January 1, 1938?

The answer is NO.

The opinion in this case dealt with conditions as they existed—not as they might have existed had carrier complied with Item 2 of the Mediation Agreement of August 5, 1937. No one knows precisely what the status of any employee affected would have been during the period in question had the carrier complied with said mediation agreement. Moreover, when carrier failed to put the agreement into effect, it assumed the consequences of its action and cannot now escape them on the basis of a contention that the status of an employee would have been different had it done so. Carrier's liability is measured by the rate of pay of the position to which an employee was assigned during the period.

Referee Dozier A. DeVane, who sat with the Division, as a member, when Award No. 858 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1940.