Award No. 949
Docket No. TE-961

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that, the Carrier in arbitrarily declaring the positions of Train Director in the Hudson Tower on the New York Division, New York Zone, abolished and creating block operator positions in lieu thereof, violated (1) the provisions of Regulation 8-A-1 of Telegraphers' Agreement, and in permitting the incumbents of the train director positions to exercise displacement rights on other positions, violated (2) the provisions of Regulation 3-E-1 of said agreement; and that all employes affected as a result of this improper action of the Carrier shall be restored to their former or original positions and reimbursed for any and all loss suffered or incurred."

EMPLOYES' STATEMENT OF FACTS: "Prior to February 16, 1938, the following scheduled positions were in effect at Hudson Tower; New York Division:

First trick; one Train Director, rate $205.45 per month.
Second trick; one Train Director, rate $205.45 per month.
Third trick; one Train Director, rate $205.45 per month.

"Effective 3:01 A. M. February 16, 1938, the following positions were placed into effect without negotiation with Committee at Hudson Tower:

First trick; one block operator, rate 82¢ per hour.
Second trick; one block operator, rate 82¢ per hour.
Third trick; one block operator, rate 82¢ per hour.

"Employes holding positions as Train Director were notified and exercised seniority on other Telegraph Department positions on the New York Division.

"Committee protested change made effective February 16, 1938, also protested the Train Directors being permitted to exercise seniority to other positions on the New York Division, requesting that conference be held before any change was made. Protests were disregarded, changes were put into effect February 16, 1938; and conference was then arranged for February 24, 1938, and discussed with Committee, the matter of Regulation 8-A-1 in its application to Hudson Tower and changes as made. Adjustment could not be reached and joint submission was entered into."

CARRIER'S STATEMENT OF FACTS: "A communication dated April 13, 1939, from the Secretary of the National Railroad Adjustment Board, Third Division, to Mr. J. A. Appleton, General Manager, of the New York

this classification having been entirely eliminated, the incumbents of the said Train Director positions were properly permitted to exercise their seniority in accordance with the provisions of Regulation 3-E-1 previously quoted and the employes affected by such displacement are not entitled to be restored to their former positions or to be reimbursed for any loss claimed thereby.

"Summary

"The Carrier has shown that:

"(1) Since February 15, 1938, there have been no Train Directors duties at Hudson Tower;

"(2) The abolishment of the Train Director positions when the duties of this classification no longer existed and the establishment of Block Operator positions without prior agreement with the representative of the employes, was not in violation of the provisions of Regulation 8-A-1;

"(3) When the incumbent Train Directors were removed from Hudson Tower on February 15, 1938 by the abolishment of their positions, the exercise of their seniority to other positions included within the Preamble of said Schedule of Regulations was in accord with the provisions of Regulation 3-E-1.

"Conclusion.

"Therefore, the Carrier respectfully submits that the action taken in the instant case was not in violation of the agreement between the Carrier and the employes represented by The Order of Railroad Telegraphers and respectfully requests your Honorable Board to dismiss the claim of the employes in this matter.

"The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: For some years prior to February 16, 1938, carrier maintained a station on its main line known as Manhattan Transfer, located a short distance from Newark, N. J. All main line passenger trains stopped at this station for the purpose of exchanging steam and electric engines and to allow passengers traveling to and from Hudson Terminal and Jersey City to transfer from one train to another.

In order to handle the heavy and complicated train movements at the station, carrier operated two towers, one called "N" Tower at the west end of the station, and the other Hudson Tower, located at the east end of said station. Each tower was manned by three train directors and a number of other employes.

Upon completion of the electrification of the main line of carrier, and when it was no longer necessary to exchange steam and electric locomotives at Manhattan Transfer, the station was abolished and Newark, N. J. became the transfer point for passengers traveling to and from Jersey City and Hudson Terminal. Effective February 15, 1938, "N" Tower was abandoned, the positions of all employes working in said tower abolished, and all interlocking functions then being handled at this tower were transferred to Hudson Tower. Prior to the date this change became effective, all positions at Hudson Tower except those of train director had been abolished. At the time the change was made effective the three positions of Train Director were abolished and three new positions of Block Operator were established. Carrier held no conference with representatives of the employes before putting this change into effect.

Petitioner contends that the positions of Train Director could not be abolished and the work turned over to Block Operators except after con-

ference and agreement between the parties. In support of this contention Petitioner relies upon Regulation 8-A-1 of the Agreement, which reads as follows:

> "8-A-1. The entering of employes in the positions occupied in the service, or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein provided unless or until the duties or responsibilities are substantially changed, when a reclassification of the rates and/or the conditions may be made based upon like positions on the same Region as agreed to between the local committee representing the employes and the proper officer."

Carrier contends that its action was fully warranted by Regulation 8-C-1, which provides:

> "8-C-1. When new positions are created rates of pay will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

While carrier adopted the procedure of abolishing the positions of Train Director and establishing new positions of Block Operator in the instant case, in the Opinion of the Board the dispute should be resolved on the basis of a reclassification as authorized in Regulation 8-A-1, and that said Regulation is controlling.

This case does not involve the question of removing work out from under the Telegraphers' agreement. Both Train Directors and Block Operators are covered by the agreement, and the work in question still remains under the agreement. The sole question presented is whether, under Regulation 8-A-1, positions once established may be reclassified by carrier without conference and agreement with representatives of employes.

The record very definitely shows that the work that remained in Hudson Tower after Manhattan Transfer was abolished as a station and transfer point was of the character generally performed by Block Operators. But, as contended by Petitioner, this is immaterial if the agreement between the parties requires conference and agreement between them before a position once established may be reclassified because of a substantial change in the duties or responsibilities of the position.

Regulation 8-A-1 guarantees to employes two things: (1) that no change in their classification or work shall operate to establish a less favorable rate of pay or condition of employment than is provided in the agreement unless and until the duties or responsibilities are substantially changed; and (2) when a reclassification is made the rates of pay and/or conditions of employment will be based upon like positions on the same region as agreed to between the local committee representing the employes and the proper officer.

The dispute revolves around the meaning of the words "as agreed to between the local committee representing the employes and the proper officer." In resolving this dispute it must be kept in mind that the parties mentioned in the above-quoted excerpt have no authority to establish positions and fix rates of pay. These are controlled by the agreement. The rule is explicit as to what the parties may agree upon. It states that when a reclassification of a position is made the rates of pay and/or the conditions of employment shall be **based upon like positions on the same region as agreed to between the local committee representing the employes and the proper officer.** As pointed out above, the conferring parties could not fix a rate of pay for the reclassified position. They could only agree that a certain existing rate of pay for a like position on the same region was appropriate for the position in question, but that is as far as their authority goes. Their authority is therefore limited to the determination of "like positons on the same region," the rate of pay of which then becomes the proper rate of pay for the reclassified position.

Substantially the same question was before the Pennsylvania Railroad-Telegraphers' System Board of Adjustment in Docket 203, and by Decision 202 that Board reached the same conclusion as to the meaning of Regulation 8-A-1. While not controlling in this case—as that Board was set up pursuant to the provisions of the Amended Railway Labor Act—the opinion should and does carry great weight with this Board.

It should be pointed out that what we have said above in no way relates to the right of the employes to question the action of the carrier in reclassifying a position. That question is not before the Board in this case. The parties agree that the duties of Train Director have not been present at Hudson Tower since February 15, 1938, and the sole question presented is whether the position could be reclassified without conference and agreement.

Regulation 8-A-1 does provide for conference and agreement as to which rate in the wage scale is appropriate for the reclassified positions and the record shows that no such conference was held and agreement reached prior to the reclassification of the positions. However, as Petitioner disputed carrier's right to make the reclassification, it could appropriately decline to agree as to the proper rate of pay for the reclassified positions until the dispute was settled. Moreover, the penalty for failure to confer and agree in advance of reclassification is not the retention of the existing position until an agreement is reached. When the parties fail to agree upon the appropriate rate of pay for the proposed reclassified position, carrier may make the reclassification and put into effect the rate it considers appropriate for the reclassified position, and if the employes are dissatisfied therewith they may bring the dispute to this Board for adjudication.

What we have said above disposes of that part of the dispute claiming a violation of Regulation 3-E-1 of the agreement. It is agreed by the parties that, if the positions of Train Director were properly reclassified, the employes holding said positions properly exercised their seniority after their positions were abolished.

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of September, 1939.