

Award No. 1102

Docket No. TE-1069

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railway for payment due the three telegrapher-levermen at Hannibal Bridge at rate of \$10.00 per month each, retroactive to November 4, 1936, account their being required to operate steam pump for the pumping of water."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing date of October 16, 1927 as to rates of pay, rules and working conditions, is in effect between the parties to this dispute.

"On Hannibal Bridge between East Hannibal, Illinois and Hannibal, Missouri, there is an office designated as Hannibal Bridge. This office is equipped with interlocker machinery, controlling signals governing the movement of trains on Wabash Railway across river bridge and the crossing of the C. B. & Q. Railroad and the Wabash Railway on the west side of the river. Equipment controlling the draw bridge is also located in this office. In addition there is telegraph, telephone and train order semaphore equipment in the office.

"In the same building and in a room adjoining the telegrapher-leverman office is located a boiler and a tank. The boiler is fired with coal and this work is performed by the telegrapher-levermen and they are also required to see that the water supply is maintained at a proper level and in so doing it is necessary to pump the water from the river into the supply tank to be used in the boiler to generate power to operate the draw bridge to permit boats on the Mississippi River to pass through. In addition, it is necessary for the employees to oil the machinery and see that it is kept in proper working order. This work is similar in character to that performed by other employees covered by the Telegraphers' Agreement on the Wabash Railway and brings them under the rule covering 'Operating pumps, etc.,' Rule No. 11.

"Rule 11 of Telegraphers' Agreement reads:

'Rule 11
'Operating Pumps, etc.

'(a) Employees required to operate electric, gas or steam pumps will be paid Ten (\$10.00) dollars per month for such service in addition to their regular salary.'

CARRIER'S STATEMENT OF FACTS: "For many years prior to 4:00 P. M., November 14, 1936, three positions classified as levermen, and paid on an hourly basis were maintained on the Mississippi River Bridge at

such as water, with sufficient force to deliver the fluid (water) against a pressure as great or greater than that of the motive fluid (steam). The water is forced against the higher pressure by the impulse of the steam jet which becomes condensed as soon as it strikes the stream of cold water it impels.

"The capacity of the ejector used to raise water from the river to the storage tank in the power house on the Hannibal Bridge is 24 gallons per minute; whereas the capacity of the pumps used to pump water in large storage tanks for the use of locomotives such as described above, is from 150 gallons per minute to 300 gallons per minute.

"The fact that the committee proposed in 1927, a change in Rule 11, Paragraph (a) of the agreement effective January 1, 1926, for the sole purpose of bringing levermen employed on the Hannibal Bridge under the provisions of that rule, is conclusive evidence that they well understand that the telegrapher-levermen now employed on the bridge are not entitled to additional compensation under the provisions of Rule 11, Paragraph (a) of the existing agreement.

"The submission of this case to the Board is without question an attempt on the part of the committee to obtain a new rule in a manner contrary to the provisions of the Railway Labor Act, as amended.

"Furthermore, we also desire to call attention of the Board to the fact that no employe as leverman on the Hannibal Bridge prior to 4:00 P. M., November 14, 1936, or no employe as telegrapher-leverman on the Hannibal Bridge subsequent to that date has submitted a claim of any character for additional compensation under the provisions of Rule 11, Paragraph (a) account of being required to perform the service in question. That is conclusive evidence that the employes involved thoroughly understand that they are not entitled to additional compensation under the provisions of that rule.

"When consideration is given to these facts, and the further fact that the alleged claim covered by this Docket was originated by the General Chairman, it is clearly evident that the request of the committee is without question a request for a new rule.

"The granting of new rules is a power the Board does not possess under the law by which it was created. The contention of the committee should, therefore, be dismissed and the claim denied."

OPINION OF BOARD: Rule 11 (a) of the Agreement, under which this claim is submitted, provides that "employes required to operate electric, gas or steam pumps will be paid Ten (\$10.00) dollars per month for such service in addition to their regular salary." While on its face this rule would appear to cover the operation of all steam pumps, and hence to embrace the situation involved in this dispute, there are a number of persuasive circumstances which support an opposite conclusion and require that the claim be denied.

First. It is common knowledge that such rules are incorporated in agreements as a means of affording extra compensation for the performance of services unrelated to those normally performed by the employes receiving such compensation. In the present instance the operation of the drawbridge at Hannibal Bridge constitutes, with some telegraphing, part of the normal tasks of the telegrapher-levermen there employed, for which their regular salaries are paid. The operation of the steam pump is essential to the operation of the drawbridge, as an organic element of such operation, and no more constitutes a distinct and unrelated task than does the use of the storage tank, boiler, and steam engine concomitantly employed for the purpose of operating the drawbridge. In such circumstances there appears to be no rationale for a separate and added allowance for the operation of the steam pump.

Second. The levermen at Hannibal Bridge have handled the mechanisms involved, including the steam pump, since August 1, 1919, under various agreements which embraced a rule substantially similar to that contained in the prevailing Agreement with respect to extra compensation for the operation of steam pumps; and yet they have never received such compensation, nor did they protest or submit claim concerning the practice till November 2, 1937, more than ten years after even the current Agreement, with the present rule, became operative. These circumstances constitute weighty evidence that the parties understood and recognized that the provisions as to extra compensation for the operation of steam pumps were not applicable to the employes at Hannibal Bridge. The claim submitted November 2, 1937 is made retroactive to November 14, 1936, because on that date the positions involved were changed from levermen to telegrapher-levermen. But there is no stronger basis for a claim as of that date (November 14, 1936) than of any earlier date, since the work involved in the operation of the drawbridge continued to be the task of these employes and was in no wise changed by the consolidation of positions. The practice pursued without protest during all these years, in light of the nature of the work assigned to these employes, cannot be disregarded in determining the intent of the parties with respect to the applicability of the rule.

Third. In the course of negotiating the current Agreement, effective October 16, 1927, the employes proposed so to modify Rule 11 (a) as to include, in addition to electric, gas or steam pumps, "gas or steam engines." The carrier, in taking the proposal under advisement and before rejecting it, referred to it as relating to "the operation of the steam engine on Hannibal Bridge," and added explicitly: "It is our understanding that this is the only point on the system that is involved in connection with your request in having the Rule changed." These circumstances constitute weighty evidence that the matter here at issue was the subject of negotiation between the parties and was deliberately disposed of in conformity with past practice. Since the parties themselves failed of agreement to change the rule as theretofore understood and applied, it is not the function of this Board, in passing upon a claim first submitted ten years later, to effect virtually the same change in the rule through a process of interpretation.

For a discussion, in other connections, of some of the principles involved in the disposition of this proceeding, see Awards 213, 640, 701, and 782 of this Division.

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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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