

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, 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 duties of block operator are covered by the Scope of the Telegraphers' Agreement and that said Agreement was violated when the Carrier used Track Foreman or his Assistants on the Arc Welding Gang to perform block operators' duties between Landlith and Brill, on the Maryland Operating Division, July 5 to October 19 inclusive, 1939, and that the oldest idle available telegrapher eligible for block operator service during this time be reimbursed for any monetary loss suffered by reason of failure of the carrier to use him to perform such service."

EMPLOYES' STATEMENT OF FACTS: "During a period between July 5th and October 19th inc, 1939, while the Regional Arc Welding Gang, in charge of a General Foreman, has been working on the main tracks between Landlith and Brill, Maryland Division, in order to provide absolute block protection and to facilitate the work as much as possible, a Track Foreman or an Assistant Track Foreman was stationed at the nearest outlying telephone to keep in touch with the block operators by telephone and to obtain the necessary permission for the Welding Gang to occupy main track and to report clear for trains to be entered upon that track. This Track Foreman or Assistant Track Foreman remained at the telephone the entire time the gang is working, to be in constant communication with the block operators for train operation."

POSITION OF EMPLOYES: "An Agreement bearing date of December 1, 1927, as to Rules, (except as otherwise designated), and March 1, 1929, as to Rates of Pay, is in effect between the parties to this dispute.

"The scope of said Agreement covers the following classifications:

'Managers, Assistant Managers, Wire Chiefs and Assistant Wire Chiefs, who regularly work as Telegraphers, Train Directors and Assistants, Telegraphers, Telephone Operators (except switchboard operators), Block Operators, Operator-Clerks, Levermen, and Printer-Operators, employes of the Pennsylvania Railroad Company.'

"The Scope Rule of the Telegraphers' Agreement, includes Block Operators, whose duties comprehend the blocking of trains by telegraph and/or telephone. These employes must pass the Book of Rules examination and be qualified to perform such service. From time to time, they are re-examined on the Book of Rules, that they may be at all times fully qualified in performing the duties of their assigned classifications.

ployes, are controlling upon the National Board even though the parties had not agreed that such interpretations were to become part of the Regulations and, as such, be binding. For instance, in the **Order of Railroad Telegraphers and The Baltimore and Ohio Railroad, Award No. 234, Docket No. TE-234**, of the Third Division (Lloyd K. Garrison, Referee) reported in Volume II of the Awards of the National Railroad Adjustment Board at Page 271, it was held that a decision of such a System or Joint Board made in a 'substantially identical case' controlled the decision of the National Board. The opinion at pages 273 and 274 contains the following language:

'Since the carrier had equal representation on that Board and joined in these decisions, we think the decisions must be given weight as indicating the common understanding of the parties in situations such as that now before our Board. Since our function is to apply the agreement between the parties, the interpretation which they themselves, through their own Board, have placed upon it should not lightly be disregarded by our Board * * *.'

'Whatever weight might be given to these two cases, we think the decisions of the Telegraphers' Adjustment Board and of this Board, heretofore cited, should be controlling.'

"VI. The National Railroad Adjustment Board, Third Division, Should Deny the Request of the Claimants in This Dispute.

"The Carrier has shown that the work performed by the Track Foreman in the instant case is not work which comes within the scope of the Telegraphers' Schedule of Regulations and is not work which the Carrier must use employes of the Telegraph Department to perform.

"Therefore, the Carrier respectfully submits that the use of the Track Foreman to do the work involved 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: During a period between July 5 and October 19, inclusive, 1939 while the Regional Arc Welding gang in charge of a general foreman, was working on the main tracks between Landlith and Brill, Maryland Division, in order to provide absolute block protection, a track foreman or an assistant track foreman was stationed at the nearest outlying telephone to keep in touch with the block operators by telephone and to obtain the necessary permission for the welding gang to occupy main track and to report clear for trains to be entered upon that track. This track foreman or assistant track foreman remained at the telephone the entire time the gang was working that he might be in constant communication with the block operators for train operation, reporting all trains passing on track used and securing block permission before track could again be occupied.

It is the position of the employes that in accord with provisions of the contract employes whose duties require the transmitting and/or receiving messages, orders, and/or reports of record by telephone in lieu of telegraph are properly classified as coming under the Telegraphers' Schedule and such duties belong exclusively to that class; that the carrier has violated that contract in permitting and/or requiring track foremen or assistant foremen to use the telephone constantly the entire day to secure block for the Arc Welding Gang to occupy main track, to report them clear of the main track in order to provide absolute block protection for the Arc Welding machine movements, and to secure line-ups for train movements.

Among other contentions, carrier contends that there is no provision in the Agreement or Schedule of Regulations between the parties which requires the carrier to use employes of the Telegraph Department in such cases, and that the action complained of was not in violation of the Telegraphers' Agreement, as that Agreement was interpreted by the Pennsylvania Railroad Telegraphers' Reviewing Committee.

The employes contend that work of a class covered by the Agreement belongs to the employes upon whose behalf it was made and cannot be delegated to others without violating the Agreement. Numerous awards of this Board and others so hold. This Board thinks that this general statement is no longer an open question.

But the real question before the Board is, Do the facts in this dispute come within the above principle? The employes rely upon the Scope Rule of the prevailing Agreement, which reads:

"Managers, Assistant Managers, Wire Chiefs and Assistant Wire Chiefs, who regularly work as Telegraphers, Train Directors and Assistants, Telegraphers, Telephone Operators (except switchboard operators), Block Operators, Operator-Clerks, Levermen, and Printer-Operators, employes of the Pennsylvania Railroad Company."

On the other hand, the carrier contends that, as this has been interpreted by the Pennsylvania Railroad Telegraphers' Reviewing Committee in its Decision No. 52, the work in question is not within the prevailing Agreement.

The employes admit that the Agreement, as interpreted by the Pennsylvania Railroad Telegraphers' Committee, is controlling in this dispute.

In Decision No. 52 the Arundel Corporation was moving dirt in its cars hauled by a dinky engine across the main track of this carrier.

"In order to protect the movement of trains operating over the C. & P. D. Branch between Safe Harbor and Star Rock, one conductor and two brakemen are assigned at different locations between these two points. The conductor works direct with the operators at Harbor and Creswell in getting permission for the Arundel Corporation to set off blasts and for the movement of their dinky engine and cars across the track of the C. & P. D. Branch and reports the track as being clear for movement of trains after the blasts have been made and the movement of the dinky engine and cars of the Arundel Corporation has been completed.

Protest has been made by the Telegraphers' Committee against the use of a conductor for this work and claim that as the conductor is performing work which is generally recognized as Telegraph Department employes' work, employes of the Telegraph Department should be assigned to perform the duties that are now being performed by the conductor.

A shanty has been provided at the point of crossing equipped with a telephone which is used by the conductor in securing block permission and clearing the block and in communicating with the brakemen." (Page 34 of Record.)

That Board held that there was no violation of the agreement.

The Board is unable to see any material distinction between the facts in Decision No. 52 and the facts in the claim in this dispute.

The conductor in that case and the track foreman in this case were stationed at the telephones for the purpose of finding out when the tracks could be used and did report to blockmen when the trains of this carrier had passed.

The Board is of the opinion that Decisions 14, 19 and 70 of the Pennsylvania Telegraphers' Reviewing Committee are not parallel to the facts in this case.

Based solely upon the fact that Decision No. 52 is controlling, the Board is of the opinion that there was no violation of the prevailing Agreement.

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 employe 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 there was no 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 16th day of December, 1940.