

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Lehigh Valley Railroad that:

1. the work of the performance of the duties and responsibilities of telephoner-levermen and block operator required to be performed at Black Creek Junction, Pa., since December 4, 1945, is work covered by the prevailing telegraphers' agreement and shall be performed by employees under said agreement,
2. the Carrier is continuously violating the telegraphers' agreement since December 4, 1945, by requiring or permitting employees not under the telegraphers' agreement to perform such work daily at Black Creek Junction.
3. In consequence of such violation, the Carrier shall be required to restore said positions, return the former incumbents thereto and pay them for any wage loss plus any expenses incurred; also, any other employees who were adversely affected by the operation of seniority rules shall be returned to their former positions and paid for any wage loss plus any expenses incurred.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective dates of July 1, 1940 as to rules and December 27, 1943 as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement (Wyoming Division) lists the following:

Black Creek Junction Block-Operator Switchtender .90 per hour

"	"	"	"	"	"	.90	"	"
"	"	"	"	"	"	.90	"	"

The Carrier on January 3, 1945 filed application with the Interstate Commerce Commission, under paragraph (b) Section 25 of the Interstate Commerce Act as amended for authority to modify its automatic block signal system at Black Creek Junction, Pa., on the Wyoming Division, at junction of the Hazleton and Quakake Branches, involving change of semi-automatic signals 1343 and 1352, on the Hazleton Branch, and signal M1352 on the Quakake Branch to automatic signals and discontinuance of block station; the purpose stated, on account of decreased traffic due to discontinuance of ore shipments during winter months.

extra trains now using this route average from one or two movements each twenty-four-hour period.

POSITION OF CARRIER: As indicated in our Statement of Facts, three operator-switchtender positions were abolished December 5, 1945, because of the cessation of the ore traffic and there was no longer any necessity for them. When the new Telegraphers' Agreement was negotiated, effective July 1, 1940 (this is the current agreement), Black Creek Junction Tower was not included in that agreement. The positions of towermen were not then in existence, and it was recognized by both the Carrier and Union representatives that there was no need to continue the positions of towermen at Black Creek Junction. Therefore, there was no violation of the agreement in operating through the crossover in the method which was then in effect, and which method is in effect at this time.

The Telegraphers' Union representatives in our scheduled negotiations resulting in the July 1, 1940 agreement, made no contention that the Black Creek Junction tower positions should be included in said agreement. They recognized the positions had been properly discontinued, and there was no dispute regarding these former towerman positions. The representatives of the Employees knew it was proper to operate over the crossing in the manner indicated. There is no necessity now for the services of towermen at Black Creek Junction. We have no regularly scheduled trains using the route in question, except extra trains as indicated in our Statement of Facts. The operation over this crossover is the same as over any other main line crossover. At all such points, it is the duty of the trainmen to operate switches in line with their regular duties.

It would be absurd to create a position of towerman even for eight hours a day to make necessary operations for movement of one or two trains each twenty-four-hour period over a rail crossing. The expenditure of money to maintain such unnecessary position would be a burden to the Carrier, and one which would result in uneconomical operation. The discontinuance of the towerman positions was authorized by the Interstate Commerce Commission, thus establishing the fact that the present method of operation is in accordance with public interest, convenience and safety. To support our contention, we call the Board's attention to Award 1290.

In view of the facts and circumstances as outlined above, the claim in this case should be declined.

OPINION OF BOARD: The record discloses that at Black Creek Junction, located at a point where the Quakake branch crosses the Hazelton branch, there were no positions of block-operator switchtenders existing prior to July 1, 1943, when, due to the war emergency which necessitated the heavy movement of ore between Erie and Bethlehem, Pa., the Carrier, to facilitate the shipments and to expedite the war effort, established three positions of block-operator switchtenders at said Junction. The facilities necessary to this operation were granted by the Interstate Commerce Commission upon application of the Carrier. Due to the cessation of war, the traffic in great quantity disappeared. The Carrier deemed the positions unnecessary and abolished them on December 5, 1945, the Carrier then reverting back to the method of handling the work at Black Creek Junction as it was handled prior to the establishment of the three positions in question, and on application by the Carrier, the Interstate Commerce Commission approved a change in the facilities to meet the situation. The difference in the facilities at the present time and at the time prior to the establishment of the positions is that electric locks were placed on the switches on the crossover at the Junction.

The Organization predicates its claim on the premise that when the positions were abolished, December 5, 1945, there remained work that belonged to the block-operator switchtenders which was turned over to the trainmen by the Carrier, and by so doing, the Carrier violated the Scope Rule 1, Rule 2, and Rule 75, of the applicable agreement effective July 1, 1940, which together with the rates of pay dated December 27, 1943, are attached to the agreement and made a part thereof, and are in evidence.

The nature of the violation of the Rules is set forth fully in the Organization's statement of facts, position and oral argument appearing above, and need not be repeated. After the positions were abolished, the Carrier issued certain instructions with reference to the handling of the work at the Junction from and after December 5, 1945, which likewise are set forth above.

The Carrier's contention is that the operation of the movement of trains at Black Creek Junction is the same as it was when the current agreement was made effective, July 1, 1940. Therefore the Organization, at the time of negotiating the agreement, July 1, 1940, recognized that trainmen handling the work at Black Creek Junction relied upon their timetables, other instructions, automatic and semi-automatic signals, switch indicators, and other electric devices, in order that the Quakake branch trains could properly enter upon and move through the Hazelton branch. The Organization denies this contention.

When the current Agreement was negotiated, July 1, 1940, Black Creek Junction tower was not included in the Agreement, and the Organization made no claim to any work at said junction, nor did it protest the manner in which the work was being handled and performed.

The Organization contends the second paragraph of Rule 2 of the Agreement, which reads as follows: "Where existing payroll classifications do not conform to Rule 1, employees performing service in the classes specified herein shall be classified in accordance therewith" does not require negotiations across the table for the purpose of including newly established positions, or re-established positions, in the Agreement: That the negotiations from which Rule 2 stemmed are the negotiations which cut these positions into the Agreement: That at no time did the Organization recognize or agree that work covered by the Scope rule of the Agreement could be performed by others not covered by the Agreement: That Rule 2, as a catchall rule, provides for just such a situation.

We agree that negotiations across the table are not originally necessary when positions such as appear here are created or established. We believe, however, the positions in question came into existence when they were established or created on July 1, 1943, they at that time were specific entities and were then existing.

Rule 2, and the paragraph relied upon, refer to existing payroll classifications, and to employees performing services in the classes specified in Rule 1, which means, when positions are established or come into existence they shall be classified in accordance with Rule 1 of the Agreement.

The Carrier cites Award 3289. This award pronounces the following rule: "* * * where a written agreement has been entered into, all prior and contemporaneous negotiations and understandings are merged in the writing. The written agreement expresses the intention of the parties. Any other rule would destroy the benefits of a written agreement."

In the instant case, when the new agreement was negotiated, on July 1, 1940, Black Creek tower was not included therein, and for a period of three years, that is, until July 1, 1943, there had been no protest made by the Organization, or any claim made by it with reference to the handling of the work at Black Creek Junction. The parties were in mutual accord on the handling of the work at such Junction—they placed their own construction on the contract, and we should accept, as we are obliged to, the construction placed on the contract by the parties thereto.

From the record, there is no substantial difference in the manner in which the work at Black Creek Junction was performed prior to July 1, 1943, and at the present time. The presumption arises that the positions in question were by necessity established to provide for a war emergency. This is borne out by the fact that the traffic at Black Creek Junction is one or two trains in twenty-four hours, evidently the same amount of traffic as existed at the Junction prior to July 1, 1943. Under the circumstances, the Carrier was within its rights in abolishing the positions.

We have taken cognizance of the change in apparatus and the cited awards pertaining thereto holding that a change in apparatus does not remove the work from the Agreement. The change made in the apparatus in the instant case does not substantially change the manner of handling the switches—it is a safety precaution.

There are two instances appearing in the record where train crews received train orders direct from train dispatchers, cited by the Organization as constituting a violation of the rules. This might constitute a violation of the Agreement for which the carrier may be liable for a penalty due to the employe, or employes, who may be entitled to have had this work. It is not shown that this practice is general, and these two instances are not sufficient to require the establishment of the positions. We do not foreclose the right in this award to any employe in such respect who may be entitled to present a claim, to do so.

We conclude, for the reasons herein stated, that the Carrier has not violated the 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 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

The Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.