

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY
(Western Region)

STATEMENT OF CLAIM: Claim of the Local Committee, B. R. S. of A., that the Carrier violated the agreement—

1st: When on June 1, 1944 it removed the work of remodeling the interlocking plant at Whiting, Indiana, and the installing of a reverse signaling system on the Chicago Terminal Division between Whiting and Clarke, Indiana, out from under the operating division, comprising the Chicago Terminal Division seniority district, and assigning said work to employees who hold no seniority rights thereunder entitling them to perform said work.

2nd: That the regularly assigned Chicago Terminal Division employees under the supervision of the Supervisor of Telegraph and Signals adversely affected by reason of this violation of the Agreement be compensated for all time, the actual number of hours required by the foreign division gangs to do this remodeling work and to install this reverse signaling system at the time and one-half rate, that is, the amount of overtime that would have been required of the Chicago Terminal Division employees to perform the work if it had not been removed from their seniority district.

BROTHERHOOD'S STATEMENT OF FACTS: The type of signal work involved in this dispute is the installation of a reverse signaling system on the Chicago Terminal Division between Whiting and Clarke, Indiana. The term "reverse signaling system" is understood to mean that trains can operate on any track in either direction under a complete protective system of proper signal indications and devices.

The installation and maintenance of such a system, or other signal work, has always been performed by employees whose names and seniority appear on the Chicago Terminal Division roster and, up to the incident involved in this dispute, has never been a matter of controversy.

On May 1, 1944, employees of the Chicago Terminal Division, who were properly entitled to perform the signal work involved in this dispute, started to work on the following projects:

1st: Authority for Expenditures—Pittsburgh, Fort Wayne and Chicago, 644, Whiting, Indiana, track connecting industrial yard lead with eastward freight main tracks.

2nd: Authority for Expenditures—Pittsburgh, Fort Wayne and Chicago, 652, Whiting to Clarke Jct., Indiana, reverse signaling eastward to westward main tracks changes at Whiting.

Thus, his argument in effect was that the Carrier did not have the privilege of temporarily increasing its force to cope with some large construction project on a Division where the regularly assigned force was small. This has never been the Carrier's understanding of Section 5, Article 4, and it has never been so applied. It has, as stated above, always been the practice in such situations to augment the Divisional force by the use of qualified men from other Divisions.

The Carrier submits that no further proof is needed of its assertion than the inclusion of Section 17 of Article 4, (discussed above) in the Agreement by which the parties recognized that such temporary transfers of men from one Division to another was necessary and made provisions therefor.

The General Chairman also referred to Sections 5, 7, 8, 9, 10, 11, 14, 15 and 17 of Article 2, which he claimed, in some manner, provided support for his position.

The rules referred to come under the heading "Time Allowances" and are various provisions as to Sunday and holiday work, service performed continuous with bulletined hours, calls, meal period and others having to do with allowance of time.

None of the provisions mentioned are pertinent to the question at issue and their citation provide no support for the Employees' contention.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION: The Carrier has shown that it has offered to settle the dispute by allowance to the employees adversely affected, the difference between what they earned in the period involved and what they would have earned if they had been assigned to the construction work, which is fair and the method customarily followed in the disposal of such cases.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter and direct that the matter be settled on the basis proposed by the the Carrier.

OPINION OF BOARD: The carrier stated in the record in this case "It has been the practice in the disposal of cases involving circumstances similar to those in the instant case where employees were deprived of positions to which they were entitled, to recompense them in the manner which the Carrier has proposed herein."

The carrier cited as one of the most recent of such cases a dispute involving the Broad Street Station case, which had been referred to this Board and given Docket No. SG-3189, which had been thus settled, and that case withdrawn from this Division's docket.

Further, in respect thereto the carrier stated that "The citation of the settlement agreed upon in the Broad Street Station case shows that the Carrier has by agreement with the Employees, disposed of cases involving the same principle as the one herein involved, by allowing compensation to the employees who were deprived of the work by the failure to advertise positions as required by the Agreement, on the 'time lost' basis, that is, by allowing earnings which the Claimants were deprived of by such failure."

The carrier attached to the submission containing the above references to the settlement of the Broad Street Station case a copy of the letter constituting that settlement and further advised in respect to its offer in the instant Chicago Terminal Division case that "this proffered settlement is on the same terms as the settlement accepted by the Employees in connection with Docket SG-3189, withdrawn by the Employees from the Board; that settlement provided for allowance to certain Philadelphia Terminal Division employees of 'the difference between what they earned and what they would have earned each day they worked had they been permitted to work 12 hours on each such days for the period' in question. In that case, no records were available to show what hours would have been worked by the employees if positions had been advertised and bid in by them, so that by agreement 12 hours per day was fixed as the measure of the time which they would have worked. The Carrier submits that the offer of settlement made in the instant case is a proper one and should be the basis for disposal of this dispute, * * *"

It was indicated at the hearing before the Division on this case that the offer of settlement was continued. Accordingly, it is the opinion of the Board that the principle there laid down as a basis for settlement in disposing of the claim in Docket SG-3189 shall now be used and followed in disposing of this claim.

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 this dispute is demanded to the parties for disposal in accordance with the above Opinion.

AWARD

Claim to be disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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