

Award No. 3685

Docket No. SG-3655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: (a) That requiring employes covered by the T. & S. Agreement to instruct, examine, and qualify prospective Block Operators is work and that it is not covered by the T. & S. Agreement.

(b) That the practice of requiring employes covered by the T. & S. Agreement to instruct, examine, and qualify prospective Block Operators be discontinued.

EMPLOYES' STATEMENT OF FACTS: The Signalmen, sometimes known as Towermen, as used in this case are those employes who manipulate or operate the interlocking machines or block stations. Such employes must not be confused with employes who inspect, install, or maintain the signal apparatus and whose classification and duties are outlined in the T. & S. Agreement and who are classified in Section 3 of Article 1 as Signalmen and Signal Maintainers, T. & T. and T. & S.

The duties of Signalmen (Block Operators) are to operate the levers of the machine which controls the switches, derails, and signals, thereby permitting the passage of trains over interlockers. Such employes are required to have a knowledge of train operations at such interlockers, and they must also have at least a general knowledge of how an interlocking plant functions.

Signal Foremen and Assistant Signal Foremen are required to examine prospective Block Operators in the proper manipulation of an interlocking machine and other related apparatus. (These Block Operators are classified as signalmen in the Carrier's book of operating rules.)

There is an agreement in effect between the parties to this dispute bearing effective date of June 1, 1943 which should be considered as a part of the record in this dispute.

POSITION OF EMPLOYES: The Brotherhood contends that the Scope of the agreement defines the class of work the employes in the T. & S. Department will be assigned to perform.

The duty of instructing, examining, and qualifying prospective Block Operators is service not covered by the T. & S. Agreement and, therefore, should not be required of employes covered by such agreement. The duties of the several classes of employes covered by the T. & S. agreement are clearly defined in Sections 1, 2, 3, 4, and 5 of Article 1 of the agreement which, for ready reference, we quote here:

Agreement be relieved of such instruction and examination work. This request was denied by the General Managers in a letter dated September 10, 1945. Copies of these letters are attached hereto and made a part hereof as Exhibit "B". The Board should note, therefore, that although the present request pertains to the Long Island Rail Road Telegraph and Signal Department employes, an interpretation of the Agreement in this case would be equally applicable to the Telegraph and Signal Department employes of the Pennsylvania Railroad.

The Agreement makes no provision which in any way may be construed to support the Employes' position. As shown by the wording of Article 1, Section 1, the duties outlined therein are merely the "primary duties", and it has always been recognized that Foremen and Assistant Foremen have a variety of miscellaneous duties not specified therein, among which is the duty in question.

The Carrier, therefore, respectfully submits that the claim of the Employes in this case should be denied.

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 Agreement 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 Employes 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 such action.

CONCLUSION.

The Carrier has established that, under the applicable Agreement, the practice of the Carrier in requiring Foremen and others covered by the Agreement to examine, instruct and qualify Block Operators as to the operation of interlockings is not a violation of the Agreement between the parties.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

Exhibits not reproduced.

OPINION OF BOARD: This dispute involves the question of whether or not employes of the T. & S. Department, under their effective Agreement, must perform the duty of instructing, examining and qualifying prospective "block operators" for the positions they are seeking.

The parties' effective Agreement does not specifically cover the work here involved.

Carrier claims that the language used in the Agreement is obviously not intended as a minute specification of all work which may be required of these employes; that it is intended to state only the primary duties of their positions; that there are many miscellaneous duties commonly performed but which are not specifically mentioned; and that this work has been performed by certain employes of the T. & S. Department for so long that it is, by practice and custom, considered a part of their work.

But here the Carrier has issued "Special Instructions Governing Construction and Maintenance of Signals and Interlocking Plants" which contain the following:

4. 'Signalman' in these instructions refers to the employe who operates the block or interlocking station, commonly termed 'Operator.'

5. Signalmen, before being assigned to work at interlocking plants or block stations, upon request of their supervisory officer, must be examined and qualified by the supervisor of Telegraph and Signals or his representative. * * *

In construing the scope of work included in their Agreement, where the disputed work has not been definitely included therein, the employes of the T. & S. Department are entitled to consider effective rules promulgated by the Carrier which are then in effect, as they may relate thereto. These rules place this work as a duty of the "Supervisor of Telegraph and Signals or his representative." To that extent they clarify the scope of the parties' Agreement on the question here involved. We find the claim meritorious.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1947.

DISSENT TO AWARD NO. 3685, DOCKET SG-3655

This Award declares that certain instructions of the Carrier, mistakenly construed by the Opinion of Board as a limitation of authority rather than as a directive which only they were, operate to reverse the long standing and undisputed practice under such instructions and under the operation of the Agreement between the parties of having the work here involved performed by employes covered by that Agreement.

This decision discarding the determinative effect of a long continued practice, undisputed and known to the petitioners upon the negotiation of their current Agreement effective June 1, 1943, and substituting therefor a mistakenly limited interpretation of Carrier's instructions, not in any event representing any part of the Agreement between the parties, constitutes an erroneous Award.

/s/ C. C. Cook
/s/ R. H. Allison
/s/ A. H. Jones
/s/ R. F. Ray
/s/ C. P. Dugan