

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

(a) The three positions at Salem, Massachusetts, listed at page 22 of the Telegraphers' Agreement as "Towerman", should have been reclassified to "Train Directors" positions effective August 21, 1935, the date centralized traffic control operation was there established.

(b) The three so-called "Towerman" positions shall now be reclassified to "Train Director" positions, and

(c) The rate of pay shall be made to conform with the rate of pay of "Train Director" positions in the same seniority district, or \$1.275 an hour, effective September 29, 1946, which is sixty days prior to the date claim was filed.

JOINT STATEMENT OF FACTS: An Agreement, referred to herein as the Telegraphers' Agreement, by and between the parties, bearing effective date of August 9, 1944, as to rules and May 22, 1946 as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to August 21, 1935, the above-mentioned positions at Salem, Massachusetts, were ordinary "towerman" positions, and the incumbents thereof handled the flow of traffic under the direction of train dispatchers. Effective August 21, 1935, with the establishment of centralized traffic control operation, the direction of traffic, within the limits of said operation, became the duty of and was assigned to the incumbents of these so-called "towerman" positions.

At all locations on the Boston and Maine Railroad, except at Salem, where centralized traffic control operations have been established, and operated by employes covered by the Telegraphers' Agreement, the positions have been and are classified as "Train Director" positions.

POSITION OF EMPLOYES: As indicated in the Joint Statement of Facts, prior to August 21, 1935 the positions involved in this controversy were ordinary towerman positions and the incumbents thereof handled the flow of straight-away traffic under the direction of train dispatchers. Effective August 21, 1935, with the establishment of centralized traffic control operation, the direction of traffic, straight-away and reverse, became the duty

OPINION OF BOARD: The Organization claims here that when centralized traffic control was established in 1935 at Salem, Massachusetts, the three positions of Towermen should have been reclassified as Train Directors with appropriate increase in rate. A formal claim was filed with Carrier on January 27, 1947.

Claimant contends in effect that the establishment of the CTC substituted new positions of Train Directors for the old positions of Towermen. Both types of positions are specifically listed in Article 1 of the Agreement. Claimant relies particularly on Article II which states in part:

“(a) Where existing payroll classification does not conform to Article I, employees performing service in the classes specified therein shall be classified in accordance therewith.

(b) When new positions are created compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.”

Claimant asserts that prior to the installation of CTC the Towermen handled the flow of straight-away traffic under the direction of Train Dispatchers but that thereafter the direction of traffic, straight-away and reverse, became the duty of and was assigned to the positions in question.

Carrier answers that the duties both before and after such installation were exactly the same “except that the switches were thrown electrically instead of manually.

However, we find in the record the bulletin issued upon the installation of the CTC in 1935 which advised train crews to notify the Towerman in Salem Tower when ready to move and to await his permission to make the move. Also Time Table No. 41 issued in 1946 advised that at the point in question “Movements may be made in either direction by signal indication under direction of Towerman at Salem Tower . . .”, and also required first receiving permission from Towerman before making a westward move.

Thus it appears that new responsibilities of directing train movements were added to the Towermen's positions which, according to Award 482, should put them in the classification of Train Directors.

But, says the Carrier, Claimant has slept on its rights so long it is not now entitled to relief. Since the CTC was installed in 1935 thirteen years have passed and two new agreements have been made by the parties in 1939 and 1944 respectively, wherein the positions of Towermen at Salem Tower have been listed as such under the Wage Scale without question or complaint by the Organization.

Under a similar circumstance this Board decided in Award 2137 that where employees received wages over twelve years without protest they had acquiesced in the rates paid them, and the Board found “that **these** employees are barred from maintaining their claim”. (Our emphasis) This Award was followed in Award 2281 in a claim for thirteen years' back salary, and in Award 2578 for eight years' back salary. And see Awards 3002 and 3231.

Under these Awards it is our opinion that any right to an adjustment in rates prior to the filing of this claim on January 27, 1947 must be held to be waived. But we do not believe the right of the Organization now to seek a reclassification of these positions has in any way been affected by the delay. Under the rule then existing Carrier was bound to make a reclassification. And certainly Carrier has not been hurt in any way by the delay, in fact it may have profited.

It is not a function of this Board to establish a rate for a new position. In the first instance that is for the Carrier and, if protested, becomes a subject of negotiation. See Awards 1074, 1437 and 3505. However, under Article II (b) compensation for a new position must “be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district”. No doubt this Board upon proper proof may enforce this rule.

But in this claim the record does not disclose any proof of existing positions "of similar work and responsibility in the same seniority district". The Organization asks for the lowest rate paid Train Directors but as the rates for these positions vary from \$1.27½ to \$1.39 it is obvious that the "work and responsibility" of the positions must also vary.

In conclusion we find that Claim (a) must be denied. From what we have said in the above opinion Claim (b) should be sustained. Since there is a failure of proof as to Claim (c) it should be remanded to the parties to adjust their differences in accordance with the above conclusions. If they cannot reach an agreement, then the case may be resubmitted to the Board with such additional proof of the proper rate to be applied under Claim (c) as both parties may care to offer; but any increased rate, if there be one, to commence only from January 27, 1947.

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 the Carrier violated the Agreement.

AWARD

Claim (a) denied.

Claim (b) sustained,

Claim (c) remanded to the parties for adjustment with leave to re-submit to Board with additional proof of applicable rate in accordance with above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.