

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, 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:

1. Joint General Order, New York Division, No. 615, Zone E. Atlantic Division, No. 514, Zone E, dated March 2, 1944, abolished Kinkora Block Limit Station and opened KINKORA BLOCK STATION IN SERVICE, automatically placed KINKORA BLOCK STATION, Kinkora, under the jurisdiction of and made it a part of the Telegraphers' Agreement, Part 2, which office thereafter cannot be abolished and an unattended or Block Limit Station established in lieu thereof and the work transferred to an employee not under the Telegrapher's Agreement; and that,

2. The Carrier violates the Telegraphers' Agreement when it fails to assign telegraph employees to perform the service and instead permits others to perform the work at Kinkora during the days this office is established as a Block Limit Station; and that,

3. The position shall be properly manned by employees from the Telegraphers' Roster and that extra employees who have suffered loss in compensation shall be paid during the period the violation has existed.

**EMPLOYEES' STATEMENT OF FACT:** Agreement bearing date of May 16, 1943, as to working conditions, rules and rates of pay, is in effect between the parties, copies of which are filed with this Board. This Agreement is divided into Part I and 2, Part 2 of which governs in this case.

Joint General Order, New York Division, No. 615, Zone E, Atlantic Division, No. 514, Zone E, dated March 2, 1944, closed Kinkora Block Limit Station and placed in service Kinkora Block Station, Effective 10:01 A. M., Friday, March 10, 1944.

Effective 4:01 P. M., Friday, March 10, 1944, by the same Joint General Order, Kinkora Block Station was closed continuously except when opened by Train Order.

On March 10, 1944, during the hours Kinkora Block Station was opened, and on dates thereafter, the Block Station was manned by a Telegraph Department employee, an extra Block Operator from the Telegraphers' Roster, and was paid the scheduled rate of pay \$.91 per hour.

"Kinkora" thereafter, became a position in the Wage Scale of the Telegraphers' Agreement, rate of pay \$.91 per hour.

did not constitute a violation of the applicable Agreement or of any understanding or practice between the parties to this dispute.

It is, therefore, respectfully submitted that the claim is without foundation in the applicable Agreement and understanding between the parties and should be denied.

(Exhibits not Reproduced.)

**OPINION OF BOARD:** The claim is fully stated in the record. It will be noted it states that by General Order, dated March 2, 1944, the Carrier abolished Kinkora Block Limit Station and opened Kinkora Block Station, thereby automatically placing the latter station under the Telegraphers' Agreement with the result such position could not thereafter be abolished, and an unattended Block Limit Station established in lieu thereof, and its work transferred to employees not under the Agreement.

So far as applicable to this dispute the Order referred to in the Claim reads:

"Effective between 10:00 A. M. and 4:01 P. M., Friday, March 10, 1944.

Kinkora Branch  
Kinkora  
Kinkora Block Limit Station Closed.

Effective 10:01 A. M., Friday, March 10, 1944.

Amboy and Kinkora Branches  
Kinkora  
Kinkora Block Station located 372 feet east of Kinkora Block  
Limit Station, IN SERVICE.  
\* \* \* \*

Effective 4:01 P. M., Friday, March 10, 1944.

Amboy and Kinkora Branches  
Kinkora  
Kinkora Block Station CLOSED continuously, except when  
opened by Train Order."

Contrary to the usual situation, most of the facts and some of the principles involved are not in controversy. It can be stated the parties are in accord with the statements appearing in the following two paragraphs of this Opinion.

For many years a Block Limit Station has been maintained by the Carrier at Kinkora, New Jersey, on its Amboy Branch. During the recent war, because of the heavy volume of traffic between Fort Dix and embarkation points, the Carrier modified its facilities at Kinkora, with the approval of the Interstate Commerce Commission, and opened an attended Block Station at that point. By General Order such station was opened 30 times in 1944, 18 times in 1945 and once in the year 1946. On each occasion during the hours opened the station was manned by an extra employe from the Telegraphers' roster. On days it was closed work of the character performed by such position during the six hours of the days it was open was performed at the Block Limit Station by employees outside the coverage of the Telegraphers' Agreement.

On all dates involved the Carrier has recognized the principles, and agrees with the Organization, that a Block Limit Station cannot properly be established in lieu of an attended Block Station which has been in existence at the same point. Thus, it is agreed that Block Stations listed in the rate schedule appended to the Agreement, effective in 1936, or in subsequent Agreements, cannot be abolished and Block Limit Stations established at the same points in lieu thereof. Furthermore, it is agreed the principle applies wherever a Block Station is regularly established and manned by Telegraphers, whether or not such Block Station is listed in the rate schedule of the

current Agreement. Since execution of the Agreement the Block Station at Kinkora has never been so listed.

The gist of Petitioner's contentions in support of its claims is based upon the proposition that the opening of the Block Station from 10:01 A.M. to 4:01 P.M. at Kinkora resulted in the automatic abolishment of the Block Limit Station at such point and that thereafter, by reason of the understanding between the parties described in the preceding paragraph, not by any provision of their current working Agreement, the Carrier was precluded from again placing in service the Block Limit Station which had been maintained there for many years. True the Petitioner in its submission quotes various rules of the Agreement, but the fact is it makes no point of and does not rely on them. We can add, after having examined them, that except for the Scope Rule, to which we shall presently refer, none of such rules has any bearing on the issue involved.

Carrier's position is that the circumstances prevailing in the instant case do not fall within the understanding between the parties, that they definitely establish it did not open a Block Station and establish a Block Limit Station in lieu thereof, and that its action resulted in the reverse of the situation prohibited by the terms of the understanding, with the result such Agreement neither supports nor sustains the Petitioner's claim. It further asserts that all it contemplated and did by its action was to open temporarily and intermittently, for the purpose of handling heavy train movement due to the war emergency, an attended Block Station in lieu of a Block Limit Station, which latter station had not only been in existence for years but, as a result of the opening of the Block Station, was merely temporarily closed, not abolished, for six hours of the day covered by the terms of the general order heretofore quoted.

Strictly construed Petitioner's claim depends on the action taken by the Carrier on the day to which such Order applies. We extend it to cover the 30 occasions in 1944, the 18 in 1945, and the one in 1946, when similar action was taken on train orders of like nature assuming, since it is not denied, there were no others. Even in doing so we do not believe a claim, that the Carrier's action on March 10, 1944, or the subsequent intermittent action of similar character thereafter, brought the two stations within the scope of the understanding and hence subject to its requirements and obligations, can be upheld. The general effect of such Agreement is that "Block Stations regularly established cannot be abolished and Block Limit Stations established at the same points in lieu thereof." In the first place, the involved Block Station was temporarily, not regularly, established, the position was never advertised, it was never filled except by extra employes and there is nothing to be found anywhere in the record to indicate that at that time either Carrier or Organization regarded it as permanent in character. In the next place, even if it be assumed a regularly established Block Station had been created as a result of the Carrier's action and was thereafter abolished, it still cannot be said or held the instant Block Limit Station was established in lieu of the abolished station. It appears from the face of the Order, as well as from other facts to be gleaned from the record, that the Block Limit Station, concededly in existence long prior to the date of such Order, was not permanently discontinued or abolished but merely closed temporarily on account of an emergency and then only for six hours out of a twenty-four hour period. The same situation existed when it was closed on the other occasions to which we have referred. Otherwise stated, the Block Limit Station had never been abolished and was still in existence on the date the Block Station was closed. Therefore, such station was not "established in lieu of a Block Station" within the meaning of that phrase as used and contemplated by the parties in the understanding on which this claim is primarily based.

The conclusion just announced leaves but one question yet to be decided. Was the Scope Rule of the current contract violated under the conditions and circumstances presented by the record? We do not think so. It must be remembered the Block Limit Station was in existence long prior to the execu-

tion of the current Agreement. Even the Petitioner concedes that work at such a station may properly be performed by others than those covered by its terms. The well established rule is that the work of a temporary position, when the purpose for which it was created has ceased and the position has been abolished, may be returned to the position from whence it came. This, even though the work reverts back to employes not under the Agreement, if prior to the establishment of the temporary position they had a right to perform it.

So far as this record discloses the temporary Block Station was wholly discontinued and abandoned in 1946 after the emergency occasioning its use had ceased. Therefore, this Award is predicated upon that premise. If the contrary is true, even though Petitioner does not here so contend and the Block Limit Station is still in operation on the property under such circumstances as to result in taking work from the Telegraphers in violation of the current Agreement, nothing herein stated is to be construed as foreclosing or precluding Petitioner from prosecuting a claim predicated upon that premise. All this Award holds is that the facts of the case as presented show no violation of the working Agreement and that on the same facts the understanding between the parties relied on by the Petitioner does not comprehend a situation such as is here disclosed or warrant the sustaining of a claim based upon its violation.

**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 facts presented by the record disclose no violation of the Agreement and the understanding between the parties relied on does not warrant the sustaining of the claim.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1948.