

Award No. 4089
Docket No. TE-4008

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 the carrier violated the provisions of the Telegraphers' Agreement when on April 28, 1946, Train Order No. 215 was telephoned to Engineer Cole at "HG" Block Station; and that idle extra Block Operator Cora M. Snyder, who filed time card for a day's pay shall be paid accordingly.

EMPLOYEES' STATEMENT OF FACT: "HG" Langdon, Pa., ten (10) miles east of Erie, Pa., was an open Block Station continuously until April 26, 1946, thereafter closed as follows:

General Order No. 517, April 23, 1946, effective 12:01 A. M., Friday, April 26, 1946. "HG" Block Station closed daily 1:00 A. M. to 5:00 P. M.

General Order No. 520, May 2, 1946, effective 12:01 A. M. Sunday, May 5, 1946, "HG" Block Station closed 1:00 A. M. to 9:00 A. M.

General Order No. 522, May 11, 1946, effective Wednesday, May 15, 1946, "HG" Block Station closed continuously.

General Order No. 523, May 13, 1946, effective May 15, 1946, "HG" Block Station closed daily, 1:00 A. M. to 9:00 A. M.

General Order No. 525, June 4, 1946, effective June 6, 1946, "HG" Block Station open continuously.

Cora M. Snyder had been assigned Block Operator at "HG" Block Station, second trick, 3:00 P. M. to 11:00 P. M. before its first closing on April 26, 1946. After "HG", third trick by General Order No. 517 was closed, Cora M. Snyder, unable to hold a permanent position, was placed on the extra list of Block Operators.

Cora M. Snyder, held idle on April 28, 1946, filed time slip for an eight (8) hour day's pay, when this train order was handled by train crew on the hours of the trick she had held and which were declared to have been abolished. Claim was denied.

POSITION OF EMPLOYEES: An agreement is in effect between the parties to this dispute, Rules and Wage Rates effective as of May 16, 1943, (adjustments to be added). This Board is in possession of copies of this Agreement, which is divided into Two Parts: Part II, of said Agreement governing in this case.

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 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 thereto 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 shown that under the circumstances set forth herein, the copying of a train order at "HG" Block Station by the Engineman of Train BEC-1 covering the movement of his own train in an emergency situation, did not constitute a violation of the applicable Agreement and, therefore, the Claimant is not entitled to the compensation which she claims.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The complete factual picture can be visualized by resort to the ex parte submissions of the respective parties. For that reason our statement of facts will be limited to what is absolutely necessary to an understanding of the issue involved.

On April 28, 1946, pursuant to proper orders, one of Carrier's trains ran extra from Corry, Pennsylvania, to the east switch of Track 12 at "HG" Block Station with instructions to proceed down such track from "HG" Station to "MO" Block Station at Erie. The lock at the east switch was out of repair with the result the crew could not get it lined for the No. 12 side track. Thus a train order was necessary before the train could be moved. Block Station "HG" had been partially closed by the Carrier two days before and was closed at the time in question. Thereupon Train Order No. 215, issued at 5:19 A. M. April 28, 1946, authorizing movement of such train, was addressed to the Conductor and Engineman of the train at "HG" Block Station and was telephoned to the Engineer at that point by the Operator at "MO" Block Station.

The Claimant, Cora M. Snyder, who had held a regular assignment at "HG" on the date such station was closed had been placed on the list of extra operators subject to call for extra work. Following the issuance of the train order mentioned under the circumstances related she filed a claim for a day's work based on the theory that under the current Agreement she should have been called at "HG" to perform the telegrapher's work performed by the engineer and was therefore entitled to a day's pay as stated in her claim.

Preliminary to consideration of the case on its merits it should be stated the Carrier contends this Division is without jurisdiction to proceed because (1) of failure to receive notice of the grounds and nature of the claim sufficient to enable it to defend, (2) of denial of the right to be serviced with a copy of the Claimant's submission, and (3) Claimant is attempting to secure by means of an award of the Division, a new and different agreement.

Without laboring these technical objections it will suffice to say they have been examined and found to be without merit. Even if Carrier had not waived such objections by appearance and answer—which it has—the instant case involves a pending and unadjusted claim on a matter referable to the National Railroad Adjustment Board under provisions of the Railway Labor Act and is therefore properly before this Division for consideration and decision.

This opinion will be simplified by eliminating certain questions which, while they may on first blush seem to be controversial, are not actually so by reason of admissions and concessions made by the parties.

No one disputes that block operators are covered by the Telegraphers' Agreement and that the work of such positions belongs to the telegraphers. Nor is it denied Claimant would have been entitled to pay at the rate claimed if she was available for performance of the work on controversy.

It is conceded by the Carrier, both in its submission and in its oral argument before this Division with the Referee sitting as a member, that at a closed block station an engineer or conductor cannot receive or copy a train order, as was done in the instant case, except in case of an emergency. Likewise, although with more reluctance, through the same sources, it is admitted that even in cases of emergency the Agreement requires that block operators be called to perform work of such character if they are available.

Thus it appears there are but two issues on which decision of this dispute depends. First, was there an emergency? Second, if so, was the Claimant available?

We are not too certain that every situation where a train is held up, because of a broken switch, creates an emergency. On the other hand prevailing conditions and circumstances might well warrant such a conclusion in some instances. The record in this case is lacking in too many particulars pertaining to what confronted the conductor and engineer on the date in question to permit an intelligent answer to the first question. Even so we do not think one is essential to our decision. We shall assume for present purposes, without deciding the point, that an emergency did exist and proceed to determine whether the Claimant was available on April 28, 1946.

Reviewing the record on the point now under consideration we think the facts supporting Claimant's position can be fairly stated in summarized form as follows: For a considerable period of time prior to April 28 she had held a regular assignment at Block Station "HG"; her position had been abolished just two days before; during all of such time she had lived in a trailer cabin located within 500 feet of such station and that place had been given to or filed with the company as her permanent address; such address had not been changed; Claimant states she was in her trailer cabin on the night in question and ready for service if she had been called; at the time she was an extra operator and entitled to the work.

On the other hand Carrier's position Claimant was not available is based upon the premise she was at Renovo, Pennsylvania, 186 miles distant from "HG" Station at the time involved is supported only by a message indicating she had been or was supposed to have been at that point on such date. No other probative evidence is to be found in the record even as much as indicating she was actually at Renovo at such time. Nor is there any concrete evidence whatsoever tending to refute her assertion she was at her trailer cabin and had been there the entire night as she claims. We must of course take note of the fact that in these days of modern transportation, even if Claimant had been at Renovo, as Carrier contends, she could nevertheless have returned to her cabin home near "HG" Station on the same date. Of a certainty, the mere fact she was at Renovo on the date in question, if it was a fact, cannot be regarded as impeaching Claimant's assertions as to her whereabouts throughout the night of the same day. The obvious facts are Carrier made absolutely no attempt to ascertain if Claimant was available at the time of the alleged emergency, failed to obtain any concrete proof to sustain its position she was not and now relies on speculation and conjecture to support its contention respecting her availability.

In the face of a record such as has been heretofore related we can only hold that Claimant was available for service if she had been called and in view of the admissions and concessions to which we have heretofore referred, it follows her claim must be sustained.

The Carrier's position Claimant should be put on strict proof and its contention the claim is not supported by affidavits, depositions and other formal evidence has not gone unnoticed. We confess the record is not all that it might be. However, this is not a tribunal where rules of evidence and procedure are followed in accordance with the strict legal requirements of judicial procedure. It is enough to say that Claimant has established her claim to our satisfaction and in a manner long recognized by this Board as proper under its rules of procedure and practice.

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

Under the factual situation disclosed by the record the claim should be sustained.

AWARD

Claim sustained.

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.