

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, 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 when "RA" Block Station was closed, effective 12:01 P. M., Monday, July 8, 1946, all the work of the position was not abolished in fact, but remaining work was turned over to employes not under the coverage of the Telegraphers' Agreement; and further "RA" Block Station be restored and all employes improperly removed as a result, restored to their regular positions and all employes compensated any loss in earnings as well as expenses incurred by reason of this improper abolishment.

EMPLOYES' STATEMENT OF FACTS: On July 3, 1946, the following General Orders were issued on the Conemaugh Division:

Pittsburgh, Pa.
July 3, 1946.

GENERAL ORDER NO. 505
Effective 12:01 P. M. Monday, July 8, 1946.

Applies in Zone A and Zone B.

(a) MAIN LINE—WEST PENN

RA Block Station closed and home signals changed to block signals. No 101 Secondary Track of no assigned direction, controlled by UY. Take siding indicator on Block Signal 553, No. 2 track, just west of Brackenridge and on Block Signal 586, No. 1 track just west of Glassmere, out of service.

Block Limit Stations KD, WA, and JB controlled by GI.

Sidings Dilks and Summit in charge of Signalman GI.

Dragging equipment detector indication lights and push buttons located in telephone boxes at eastward and westward block signals. Trains or engines receiving stop signal indication will check indication lights which if found lighted, will indicate an actuation of the dragging equipment detector and be governed by instructions from Signalman.

Pages 3 and 5, Special Instructions 1502, 2204, 2409, 2484, 2725, and 2801 changed.

(s) G. M. Sixsmith,
Superintendent.

train orders to engine and train service employees in emergencies, it is the Carrier's right and prerogative to close such block station and that such action does not constitute a violation of the Agreement here involved.

The Carrier therefore submits that its action in closing "RA" Block Station did not constitute a violation of the applicable Agreement.

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 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 condition". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements 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 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 applicable Agreements between the parties to this dispute the closing of "RA" Block Station did not constitute a violation of the Agreement.

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 claim is stated in the record. It deals with the action taken by the Carrier in General Order No. 505, issued on the Conemaugh Division under date of July 3, 1946, which became effective July 8, 1946. The question resolves itself as follows: Did the Carrier by this order in fact abolish all the duties previously performed by claimant organization employees at "RA" Block Station?

The claim arises on the contention of claimants that the work previously performed was not in fact abolished but that it continued. Therefore, a violation of the Scope Rule of the Agreement resulted by reason thereof. In support of this position, instances are cited in the record of the practice followed after July 8, 1946, whereby members of train crews performed certain duties, i. e., the operating of push buttons, throwing of ground switches and the copying of train orders. Awards 4042, 4085, 3030, 553, 602, 2155, 3114 and 3521 are cited on behalf of the claimants.

The Carrier in denying the claim states that "RA" Block Station was in fact abolished as far as duties, existing previously and performed by claimants, were concerned. Awards 4042 and 4053 are cited on behalf of Carrier and are used, by illustrations in comparison, with situation here existing after July 8, 1946.

In accordance therewith, it is necessary that the actual operational facts relating to duties performed after July 8, 1946 be reviewed to determine as to whether or not "RA" Block Station was in fact abolished in a manner by which there no longer were duties performed, which rightfully belonged to claimants under the Agreement.

The record shows that on the closing of "RA" Block Station, effective July 8, 1946, Block Limit Stations "KD", "WA" and "JB" were placed

under the control and jurisdiction of "GI" Block Station, and the handling of the main track hand-operated ground switches between Nos. 1 and 2 tracks, and between No. 1 track and No. 101 secondary track, was performed entirely by engine and train service employees incident to the movement of their own trains or engines. Also, with the closing of "RA" Block Station, light and push buttons which were a part of the dragging equipment detector system at this point were installed in telephone shelter boxes located on either side of the crossover. General Order No. 505 required engine and train service employees upon receiving a stop signal indication, to check the indicator light, which if found lighted would indicate an actuation of the dragging equipment detector device. Trainmen were required to check their train and if no cause were found for holding the train, to confer with Block Operator at "UY" Block Station or "AJ" Block Station. The record shows that "UY" Block Station is located on the main line of the Conemaugh Division 13.3 miles east of "RA". "AJ" Block Station is located on the same main line 9.3 miles east of "RA". Instructions would be received to press push buttons which cut around the dragging equipment detector which would cause the signal automatically to show "proceed indication".

Later, on December 7, 1946, the push buttons for clearing signals were removed from the telephone shelter boxes. Thereafter, the conductor of the train actuating the device was required to call the Block Operator at either "AJ" Block Station or "UY" Block Station to receive an order to pass the signal, and under such circumstances the conductor copied the train order.

Carrier states that from December 1, 1946 to and including June 30, 1947, an emergency condition was created on only three occasions by the dragging equipment detector device actuating the signal, and a total of only six train orders were issued on the third trick in December, 1946, one on the first trick in March, 1947, and one on the first trick in April, 1947. There is set out in the record, on the period of time last cited, a chart, showing the instances where trainmen were required to copy train orders, contended to be an emergency situation, at "RA" Block Station, covering single-line movements of their trains between "UY" and "AJ" Block Stations as follows: First trick, total 9; second trick, total 2; third trick, total 10. The train orders were handled through Block Operators, who in turn telephoned the orders to the crews and there were no train orders during this period telephoned direct to crews or verbal orders so given.

Claimants' contention is that "RA" Block Station should have been kept open on all three tricks. Carrier's contention is that under the arrangement put into effect after July 8, 1946, such an interpretation of the Agreement is erroneous. And in support thereof, the Carrier states that transferring control of Block Limit Stations from one open Block Station to another has been in effect for many years and is a frequent occurrence on many divisions and is not limited to instances where the open Block Station from which transfer is made is thereafter or simultaneously closed. Therefore, the only concern of employees is whether duties or responsibilities of the position to which transferred have been substantially changed thereby, to warrant an adjustment in the rate of pay of such position, citing Article IX, Section 1, of Part II of the Agreement. This is on the principle that a party cannot accept the benefits of a contract without submitting to all the correlative obligations thereof; that, in the instance of handling ground switches, the only concern of the employee in the matter is to the extent that it may warrant an adjustment in the rate of pay, citing Section 19 of Article V of the Agreement. Therefore, it follows when "RA" Block Station was closed and the position of Block Operator abolished, the work of throwing switches was properly assigned to engine and train service employees. Likewise, in the case of subsequently restoring the signal to its normal position by employees of the Signal Department, this being work coming within the Scope of that craft or class.

The question to be decided herein apparently is the one of the degree to which the transferring of duties can be consummated and yet stay within the terms of the Agreement. The Carrier presents a plausible and logical

argument for the action taken. However, if it can be said that work which has been traditionally the work of one craft, can be transferred to employes of another craft, if only in a minor degree, it then logically follows that such violations, granted that they may be of a *minor nature*, establish a precedent which if followed to its logical conclusion by extension of the principle involved, defeats the very purpose of the right to be protected, i. e., the designating of the work to be performed by any given craft or class under Agreements of this nature.

The ruling, based on the fact situation herein presented, will be that the duties previously performed by claimants were not in fact abolished, but here transferred to other crafts. As stated, and as the Carrier contends possibly only in a minor degree, yet the transfer was accomplished and it presents a situation in which the Agreement was violated.

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

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.

DISSENT TO AWARD 4289, DOCKET TE-4013.

This award sustaining the claim in this case is faulty in its lack of distinguishment of the facts which "possibly only in a minor degree" constituted the violation it declares and in its failure to observe, as has heretofore been done by awards in analogous cases whose claims in part included claim for restoration of positions, that the Division has refrained from sustaining that part of the claims which asked for such restoration because obviously the Carrier is under no obligation to do so when within the terms of its Agreements it can adopt other methods of correction of the declared violations.

/s/ C. C. Cook

