

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, 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:

(1) that the Carrier violated the terms of the current Telegraphers' Agreement, when effective December 6, 1946, it closed out two block operator positions at "Whitings", N. J., and established in lieu thereof, on December 13, 1946, a one trick position on an intermittent basis with hours from 6:00 a.m. to 12:00 noon and from 2:00 p.m. to 4:00 p.m.

(2) that all employees adversely affected, commencing December 6, 1946, and continuing thereafter until January 2, 1947, when the two block operator positions were reestablished at "Whitings", N. J., shall be compensated for loss of earnings and expenses incurred as a result of the Carrier's action.

EMPLOYEE'S STATEMENT OF FACTS: Due to a fire on December 1, 1946, destroying Barnegat Bay Bridge between Barnegat Pier and Seaside Park, N. J., all train service south of Birmingham was temporarily discontinued and the positions of Operator-Clerk first and second tricks at "Whitings", N. J., were abolished, after performance of service on December 5, 1946.

Effective December 13, 1946, this office was reopened on a one trick basis, with an intermittent tour of duty from 6:00 a.m. to 12:00 noon and from 2:00 p.m. to 4:00 p.m.

Effective January 2, 1947, this office was again reestablished on a two-trick basis 5:00 a.m. to 1:00 p.m. and 1:00 p.m. to 9:00 p.m.

POSITION OF EMPLOYEES:

An Agreement is in effect between the parties, Regulations and Rates of Pay effective May 16, 1943, with adjustments to be added

This Agreement is divided in two Parts, Part II of which governs in this instant case.

Prior to the effective date of the current Agreement and until December 5, 1946, "Whitings" Block Station was maintained on a two-trick basis as Operator-Clerk classifications, hours 5:00 A.M. to 1:00 P.M. and 1:00 P.M. to 9:00 P.M. The third trick was closed.

Effective December 5, 1946, "Whitings" was allegedly abolished on the first and second tricks. Effective December 13, 1946, one trick was established

and continuing until January 2, 1947, by reason of the Carrier allegedly violating the applicable Agreement when it closed out two positions of block operator at "Whittings" and established in lieu thereof a one-trick intermittent position. As hereinbefore shown by the Carrier, there are separate actions involved here which must be considered on a separate basis, for example the question of the establishment of the intermittent assignment on December 13, 1946, has no bearing whatsoever on the abolishment of the two positions on December 6, 1946. The Carrier wishes to point out that the positions were properly abolished and no work of any kind was performed between December 6, 1946, and December 13, 1946. Since the positions were properly abolished they were thereby in effect removed from the rate schedule, and the position at "Whittings" subsequently established was a new position not a position established in lieu of and to take the place of the former positions. Even in the event the subsequent establishment of the intermittent operation was improper, and the Carrier has shown that it was not, no individual would be adversely affected during the period December 6, 1946 to December 13, 1946. In fact it was the Carrier's understanding when this case was handled on the property, that the claim was for loss of earnings of all employees affected during the period "Whittings" was established on an intermittent service, basis, December 13, 1946 to January 2, 1947. However the Carrier has shown that it was proper to abolish the two-trick operation at "Whittings" when all work of the positions had disappeared and subsequently to establish a one-shift operation on an intermittent basis when such new position was needed. Regardless of the claim advanced by the Employees, it is respectfully submitted that the Schedule Agreement was not violated and the claim 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 and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (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 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 Agreement between the parties to this dispute, the positions of Block Operator-Clerk on the first and second tricks at "Whittings", N. J. were properly abolished and the intermittent assignment of Block Operator-Clerk at "Whittings", N. J. was properly established.

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

OPINION OF BOARD: This claim arises from the fact that due to a fire on December 1, 1946, destroying Barnegat Bay Bridge between Barnegat Pier and Seaside Park, New Jersey, all train service was temporarily stopped south of Birmingham and the positions of Operator-Clerk, first and second tricks, at "Whittings", New Jersey, were abolished, after performance of service on December 5, 1946. Effective December 13, 1946, the "Whittings" office was

reopened on a one trick basis, with an intermittent tour of duty from 6:00 a.m. to 12:00 noon and from 2:00 p.m. to 4:00 p.m. Effective January 2, 1947, the "Whittings" office was again reestablished on a two trick basis, 5:00 a.m. to 1:00 p.m. and 1:00 p.m. to 9:00 p.m.

The Claimants contend that when the work at "Whittings" was restored on a one trick intermittent basis on December 13, 1946, the Carrier violated the effective Agreement of May 16, 1943. The particular Rules relied upon by the Claimants are:

"SCOPE

"The provisions set forth in Part II of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company and its employes of the classifications herein set forth, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the said employes in the positions classified herein."

ARTICLE V, Section 2:

"Except as otherwise provided in Section 3 of this Article (V), eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work at offices where only one shift is worked. At offices where more than one shift is worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work."

ARTICLE V, Section 3:

"(a) At offices where only one shift is worked eight (8) hours on duty within a spread of twelve (12) consecutive hours shall constitute a day's work if the regular assignment is established on the basis of intermittent service. Intervals of release from duty which do not exceed one (1) hour will be considered as time on duty. Intermittent service is understood to mean service in cases where, during the hours of the regular assignment, the employe is entirely relieved from duty for a period or periods of more than one (1) hour's duration and there is no work to be performed and the employe's services cannot be otherwise utilized during such period or periods. Nothing in this Section (3) shall be construed as permitting the institution of employes are required.

"(b) If agreed to, in writing, between the duly accredited representative and the proper officer of the Company, individual positions may be excepted from the provisions of the above paragraph (a) of this Section (3). When so excepted, a position may not be established on the basis of intermittent service.

"(c) Employes filling positions which are assigned on the basis of intermittent service shall be paid for not less than eight (8) hours within a spread of twelve (12) consecutive hours."

The Claimants protested the establishment of the one trick intermittent service at "Whittings" on December 28, 1946. The Claimants also state that the Atlantic Division Rate Schedule calls for two tricks for Operator-Clerk at this location.

The Carrier contends that the positions of Operator-Clerk were properly abolished on December 5, 1946, and that it had the right under the Schedule Agreement to establish an intermittent office on December 13, 1946 for telegraph department employes at "Whittings". The Carrier contends that Article V, Section 2, provides that eight consecutive hours exclusive of lunch period shall constitute a day's work at one-shift offices except as otherwise set forth in Article V, Section 3. The Carrier contends that the list of positions and rates of pay appended to the Schedule Agreement is for the sole purpose of

providing information with respect to the rates of pay applicable to positions covered by the Agreement and does not serve to "freeze" those positions or rates of pay as they appeared in the Schedule Agreement on its effective date.

The question before the Board is whether or not the Carrier violated the applicable Agreement when it reopened the "Whittings" office on December 13, 1946, on a one trick intermittent basis.

The two trick Operator-Clerk positions were abolished on December 6, 1946, due to a fire that resulted in all train service south of Birmingham being temporarily discontinued. The Carrier had a right to discontinue these positions under these circumstances. However, when the office was reopened on December 13, 1946, with work as here required on two tricks that is covered under the effective Agreement, the Carrier was obliged to reestablish a two trick operation as this is the agreed number of tricks for the operation of this office, under the contract as shown by the Rate Schedule "For Whittings" attached to the Agreement, and cannot be abolished by the unilateral act of the Carrier. This change from two tricks to one intermittent trick must be done by the negotiation between the parties. The Carrier violated the terms of this Agreement and the claim as to part (1) is sustained.

The Employees' compensation claim covers the time from December 6, 1946 to January 2, 1947. However, as no work was being performed at "Whittings" from December 6 to December 13, 1946, part (2) of the claims will be sustained from December 13, 1946 to and including January 1, 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 as indicated in the Opinion.

AWARD

Claim (1) sustained. Claim (2) sustained from December 13, 1946 to and including January 1, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.