

Award No. 5380

Docket No. TE-5371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, 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 extra Operator R. B. Lease, held idle on January 30, 1949, when a utility brakeman was used to handle ground switches at "FORT" Tower while that Tower was closed, shall be allowed and paid a day's pay at the rate of the position.

EMPLOYEES' STATEMENT OF FACTS: "Fort" Block Station is located three-tenths (3/10) of a mile West of Logansport Passenger Station on the Logansport Division.

Two Block Operators are assigned at this location regularly, 1st trick, hours 11:00 A. M. to 7:00 P. M., second trick, 11:00 P. M. to 7:00 A. M. The duties and responsibilities of the Block Operators in addition to blocking trains, is to handle the crossover switches between No. 1 and No. 2 Main Tracks leading to the East End of Station tracks No. 1, 2, and 3, giving permission to all trains to pass over switches after lining them up by hand signals.

On January 30, 1949, Passenger Train No. 307, an Indianapolis Division train, detouring via Kokomo-N.K.P.R.R., arrived in Logansport Passenger Station from the East at 8:00 A. M. and departed at 8:30 A. M. It was necessary that this train use the crossover switches at "Fort" Tower. The Operator, having gone off duty at 7:00 A. M., a utility brakeman was instructed to operate the main track switches at Fort to permit train 307 to enter main track, at that point leaving the passenger station tracks, brakeman then entering Fort Block Station and reported train 307 on the main to the Operator at "VAN" Tower.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, Rules and Rates of Pay effective as of May 16, 1943, with adjustments to be added. This Agreement is divided into two Parts, Part II of which governs this case.

"Fort" Block Station is a part of the Wage Scale of the Agreement of May 16, 1943, indicating that 1st and 3rd tricks are attended, with symbol (+) placing the ground switches for handling under the jurisdiction and control of the Operators.

First trick Block Operator has assigned hours 11:00 A. M. to 7:00 P. M., and second trick 11:00 P. M. to 7:00 A. M., with the assigned duty and responsibilities of blocking trains, handling train orders and handling the

The Employees also contended that upon two occasions the Carrier had called an extra Block Operator to perform the service of throwing the switch in question at a time outside the regular hours of the Block Operator positions at "Fort" and that the individual so called had been paid a day's pay for the service.

The principle has already been agreed upon by the parties that an extra Block Operator called to perform service cannot be compensated by the payment of less than a day's pay. The fact that in a few isolated instances local supervision did choose to call an extra Block Operator to report for duty and throw ground switches at "Fort", outside of the assigned hours of the regular Block Operator positions at that location, does not of itself provide that such action was necessary or that such work accrued exclusively to Block Operators at "Fort". Actually in the instances referred to by the Employees, the Train Dispatcher, without the knowledge and sanction of the proper authority, arranged for the use of extra Block Operators. The Carrier would repeat that the work here in dispute was never made a part of the duties of Block Operators except on the first and third tricks. The isolated performance of such a duty outside the hours of the first and third trick assignments does not serve to place the performance of such work under the exclusive scope of the applicable Agreement, nor to take away from trainmen the right to handle ground switches incident to the movement of their own train at "Fort" when the Block Station is not open.

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 Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreements 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 service of handling manually operated ground switches at "Fort" Block Station does not accrue to Block Operators outside the assigned hours of the first and third trick positions; that under such circumstances the Claimant is not entitled to the compensation which he 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: Under Article V of the Telegraphers' Agreement, employees subject thereto are not to be required to throw ground switches except in case of emergency, unless the regular duties of the position involved include the performance of such service. When the duty of

throwing ground switches is regularly assigned to a position, the rate of pay of such position is subject to adjustment by written agreement. Here, the block station in question is regularly operated two shifts per day by block operators, first and third tricks. The rates of pay for these tricks are contained in the Telegraphers' Agreement. No second trick position has ever been established at this location. A delayed train arrived on January 30, 1949, at an hour between established tricks when no block operator was on duty at a point known as "FORT" Tower. The train crew, assisted by a utility trainman, handled the movement.

It is conceded by Carrier that the work of throwing switches, through agreement and not otherwise, belongs to employes covered by the Telegraphers' Agreement when occurring during the first and third tricks, such being a part of their regular assigned duties for which extra compensation is paid. The Organization contends that the duties negotiated into the Agreement "covers all three tricks or the 24-hours at this location"; that block operators could not decline to throw switches during the second trick if one was created; and that the rate established would cover the added trick without further negotiations.

It is well established that the throwing of switches is not a task traditionally performed by block operators or others within the scope of the Telegraphers' Agreement. This fact renders inapplicable several Awards cited by the Organization wherein recognized telegrapher's work was performed by others outside of regularly assigned hours.

Our problem is simply to determine the parties' intent when negotiating into the Agreement the "Fort" Block Station. On page 196 of the Agreement of 1943, we find the three positions mentioned in this record covered as follows:

Location	Office Call	Trick	Position	Hourly Rate
Elm	WA	1st-2d-3d	Block Operator	\$1.82
Fort	B	1st-3d	Block Operator	†.82
Van	MR	1st-2d	Block Operator	.89
"	MR	3d	Block Operator	.87

† Handles ground switches.

In several locations we find a difference in rates paid as between tricks, as in the case of Van, *supra*. This holds true also at locations where the block operator handles ground switches. See, for example, Cleveland-SA, page 183; Bremen-BM, page 179, where three different trick rates are paid; similarly, East St. Louis-AD, page 201.

In face of the above, it is difficult for us to find basis for the alleged intent to negotiate blanket duties and blanket rates covering "FORT" Block Station for all three tricks as the Organization urges. We believe instead that it was the practice of the parties to consider and negotiate for the positions in respect to the particular trick because otherwise there would be no need for the column in the Schedule labeled "Trick" nor would we expect to find differences in rates for tricks as we do in the examples set forth above. So finding, there is nothing, in absence of agreement, to support the Telegraphers' claim to the switching work in question during the second trick; we previously having found that it was not their work under the Scope Rule in the Agreement nor traditionally, and that second trick work had never been regularly assigned to block operators at this location so as to subject the dispute to our holdings in prior Awards Nos. 4042 and 4289. The trainmen's act in handling the ground switches to progress the movement of his own train was proper under the facts presented by this docket. As so construed, no jurisdictional conflict ensues.

We feel compelled to remand the second issue raised in the submission, i.e., use of phones by trainmen, to the parties for handling upon the property for compliance with Section 3, First, i, of the Railway Labor Act. We are satisfied from a study of the record that the character of the claim changed

during the progress of the claim to and before this tribunal. We find more than a mere change in emphasis. While the phrase "then reported train clear" appears in the statement of facts below, the claims and rulings at the several steps taken on the property revolve solely around the issue of the throwing of switches by the utility trainman. If the Organization desired to broaden its claims beyond that issue, exception should have been taken at that level to the restrictive rulings made. We cannot say that any different results would have been achieved by consideration of the additional factor. However, the Carrier's representatives were entitled to weigh the same prior to Board submission in the interest of on-the-property settlement of disputes. Further, adherence to such practice tends to avoid such conflict in facts as are present in this docket.

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

(1.) The throwing of switches by the utility brakeman in the instance presented did not infringe upon the Telegraphers' Agreement for the reasons stated by our Opinion, *supra*.

(2.) The issue raised in this submission concerning the use of phones by trainmen in progressing the movement of their train was not handled upon the property, hence this Division lacks jurisdiction to consider.

AWARD

(1.) Claim denied.

(2.) Newly-developed issue remanded for handling upon the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 28th day of June, 1951.