

Award No. 5737
Docket No. TE-5771

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company (Line West of Buffalo) that the Carrier violates the provisions of the Agreement between the parties when:

1. It combines the work of the agent-operator with the work of the 1st operator-gateman at North Judson, Indiana, each Monday and Tuesday, the assigned rest days of the 1st operator-gateman requiring the agent-operator to perform the combined duties of both positions on these two days each week, and

2. Beginning with the first day such violation of the agreement was inaugurated by the Carrier and continuing until corrected the Carrier shall

(a) compensate the senior available extra employe entitled to the work for eight (8) hours at the straight time rate for each day such violation was permitted by the Carrier, except if any such day be a holiday the compensation for that holiday will be at the time and one-half rate,

or

if no such extra employe available on any day the violation exists then the Carrier shall compensate the occupant of the position of 1st telegrapher-gateman for eight (8) hours for each day the violation exists at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties effective November 1, 1950, containing the Rules upon which this claim is based including the Rules changed and made effective because of the inauguration of the 40-hour week.

The 40-hour week was placed in effect September 1, 1949 and coincident therewith the violation cited in the Statement of claim began to run on instructions of the Carrier, continuing uninterrupted from that date henceforth. The violation still exists.

The work week assigned working days and assigned rest days for the two positions at North Judson made effective September 1, 1949 was: Agent-

present case; all employees here involved being hourly rated men. The same reasoning was used to support the decision of the Board in Awards 5272 to 5274, inclusive. Only in Award 5275 was the Board concerned with hourly rated employees to whom the same 5-day rules applied as are applicable to employees in the present case. Insofar as the decision in Award 5271 was based on the concurrent decisions in the other awards, it is, of course, not applicable here. There is, however, some language in that award which indicates that the Board, in part at least, based its decision on a misconstruction and misapplication of the rule heretofore cited which requires that "all possible regular relief assignments with 5 days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in 6 or 7 days' service * * *." Insofar as that rule was interpreted by the Board to mean that a carrier must establish relief assignments whenever it is physically possible to do so without regard to the nature of the assignments or the cost or practicability of establishing them—if that was in fact the sense of the award—it is squarely in conflict with the plain language and obvious intent of the rule and should not be followed. Indicating that the award probably is not susceptible of that interpretation, the Board went on to say that "The rule also permits the use of extra men where it is 'not practicable' to furnish regular relief. What is 'not practicable' is limited to two causes: the number of rest days involved or the location of positions; and here again there is no showing that either of these two factors made it impracticable to assign extra men." (Underscoring ours.)

In our present case there is a showing of the impracticability of assigning extra men to perform this work. To have done so would have required payment for excessive travel and deadheading time which would far exceed the cost to the carrier of alternative arrangements for performing the work or the value of the work to the carrier.

Care must also be taken to distinguish this case from Award No. 5330, where a regularly assigned employee was taken off his regular assignment one day a week to fill a relief job and where his regular assignment was blanked on the day in question. The Board found in that case that the effect of this was to reduce the claimant's assignment to a 4-day position in violation of the guarantee rule. In the present case, of course, the job of the agent-operator was not blanked on any day. He continued to work his regular full 5-day assignment.

CONCLUSION

The foregoing evidence demonstrates conclusively the lack of any merit in the position of the organization in this dispute, and this Board is respectfully urged to deny this claim.

All the facts and arguments herein presented have been made known to the employees in the handling of this case locally.

(Exhibits not reproduced.)

OPINION OF BOARD: The locale of this dispute is North Judson, Indiana. In the instant case it is alleged that the work of the operator-gate-man is improperly combined with and/or assigned to the agent-operator on the assigned rest days (Monday and Tuesday) of the operator-gateman.

The claim under consideration involves the same parties, the same rules, and is predicated on a comparable fact situation as was present and considered by the Board in Award 5736.

For the reasons stated and to the extent indicated in Award 5736 this claim is sustained.

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 Agreement was violated.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of April, 1952.

DISSENT TO AWARD 5737, DOCKET TE-5771

The dissent to Award 5736 is equally applicable here and by reference thereto is made a part of this dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ A. H. Jones