

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, 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,

(1) the Carrier violated the terms of the May 16, 1943 agreement when on July 11, 1949, it declared abolished the position of leverman third trick at "JO" Interlocking Station, New York, N. Y., and transferred the work of the position which still remained to other employees; and

(2) the position of third trick leverman at "JO" Interlocking Station, New York, N. Y., shall be reestablished; and

(3) the leverman regularly assigned to the third trick leverman position at "JO" Interlocking Station when that position was abolished on July 11, 1949, shall be compensated for all monetary losses sustained and in addition thereto relief and extra employees adversely affected by the Carrier's violative act shall be compensated for monetary losses sustained.

EMPLOYES' STATEMENT OF FACTS: Prior to July 11, 1949, at "JO" Interlocking Station, New York, N. Y., located at east end of Track No. 11, Pennsylvania Station, New York, the following force was employed, maintained and checked into as part of the Wage Scale of The Telegraphers' Agreement, effective as of May 16, 1943:

Number	Occupation	Tour of Duty
1	Block Operator	7:00 A.M. to 3:00 P.M.
1	Leverman	7:00 A.M. to 3:00 P.M.
1	Block Operator	3:00 P.M. to 11:00 P.M.
1	Leverman	3:00 P.M. to 11:00 P.M.
1	Block Operator	11:00 P.M. to 7:00 A.M.
1	Leverman	11:00 P.M. to 7:00 A.M.

Inbound and outbound movements for tracks 5 to 17, inclusive, Pennsylvania Station, New York, via East River Tunnels, are controlled from "JO" Interlocking Station.

to the Carrier to such claims. There are a number of provisions of the applicable Agreement which might constitute defenses to a claim by a named individual, but such a vague and indefinite claim prevents the Carrier from determining whether such provisions of the Agreement have been complied with by the persons on whose behalf the claim was made. The Carrier contends, therefore, that a claim for "relief and extra employes adversely affected" is improper and must be denied because it does not comply with Article V, Section 20, of the 1943 Agreement or Regulation 4-T-1 (a) of the 1949 Agreement, nor with the provisions of the Railway Labor Act. Furthermore, a claim "for all monetary losses sustained" does not give this Board any basis for making an award sufficiently definite for the Carrier to comply with. There is no indication what losses, if any, have been sustained by any identifiable employes, and it is probable that no proof will be offered by the Organization to indicate that any such damages have accrued. Under such circumstances, such a claim is too vague and indefinite to be considered by the Board and does not furnish any basis upon which a valid award can be made.

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 claims of the unnamed Claimants 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 respectfully submits that the action taken in the instant case was not in violation of the Agreement between the Carrier and the employes represented by The Order of Railroad Telegraphers and respectfully requests your Honorable Board to dismiss the claim of the employes in this action.

All data contained herein have been presented to the duly authorized representative of the unnamed claimants involved.

(Exhibits not reproduced)

OPINION OF BOARD: Here, it is claimed that Carrier violated the agreement, by abolishing 3rd trick leverman's position, and by requiring the block operator remaining at the same tower to perform the leverman's duties, all without negotiating such change with the Organization.

The Organization depends upon the scope rule, notice of change rule, and particular rate schedules based on Article V—Basis of Pay and Absorbing Overtime Rules. The Carrier depends upon Article IX, Changed Duties rule.

The Organization argues that when the agreement, of which the rate schedules are a part, was signed, the Carrier limited itself to the extent that jobs could not be abolished without negotiation as provided by the Railway Labor Act, mentioned in the contract as "Changes in Agreement".

The Carrier replies that the "changed duties" section of the agreement takes precedence over the "changes in agreement" provision, because by implication, it permits unilateral changes in the work of a position and even applies the test of "substantial change" in duties, as the basis for negotiation of changes in pay.

No argument is advanced by the Organization in this docket, that the job was abolished for the purpose of absorbing overtime, or reducing the rate of pay, or that the work remaining was assigned to others outside the scope of the agreement. Actually the argument is, that the Organization should have been consulted, and a rate fixed commensurate with the duties which were being added to the block operator's task.

This Division is of the opinion that Article IX Section 1 (a) and (b) does in fact permit changing the duties of the block operator by adding the leverman's chore to the block operator's work. If the Carrier has the unlimited right to add workers to its force, then it has the limited corollary right to remove them, subject to those provisions which the Carrier voluntarily assumed by signing the governing agreement.

It is noted that Section (b) provides

"When the duties are substantially changed, the rate of pay may be changed as agreed to, in writing, between the representative and the Company."

This Board cannot negotiate for the parties, it is permitted only to decide disputes growing out of grievances or interpretations or applications of agreements.

There having been a change in duties of the block operator, it then becomes the duty of the parties to determine whether such change is substantial enough to warrant re-rating the job. We are unable to say from the facts before us how substantial the change is. If any change in pay is warranted, we are without authority to determine the amount.

Accordingly the claim should be remanded to the parties for negotiation as required by Section 1 (b) of Article IX.

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 claim should be remanded to the parties for negotiation as required by Section 1 (b) of Article IX.

AWARD

Claim remanded to the parties in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.