

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James P. Carey, Jr., 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 Company that:

1—General Order No. 206, dated July 10, 1952, which closed Frenchtown Block Station, 9:00 P. M. to 5:00 A. M. effective July 20, 1952, was in violation of the current Agreement because the tour of duty of the Agent, a Group 1 employe, was changed from 6:00 A. M. to 2:00 P. M. to 5:00 A. M. to 1:00 P. M., thereby requiring the Agent to perform the duties of the Operator-Clerk, a Group 2 employe, from 5:00 A. M. to 6:00 A. M.

2—The tour of duty of the second trick Operator-Clerk, F. J. Boyer, was changed from 2:00 P. M. to 10:00 P. M. to 1:00 P. M. to 9:00 P. M., thereby requiring a Group 2 employe to perform the duties of the Agent from 1:00 P. M. to 2:00 P. M., in addition to his own.

3—That Agent Dalrymple, the first trick Agent, be allowed three (3) hours under the Call Rule, 4-F-1(e) for each day he was required to report for duty one hour ahead of his assigned hours, 5:00 A. M. to 6:00 A. M.

4—That Operator-Clerk, F. J. Beyer, second trick Operator-Clerk at this location be allowed three (3) hours under the Call Rule, 4-F-1(e) for each day he was required to report for duty one hour in advance of his assigned tour, 1:00 P. M. to 2:00 P. M. and also one (1) hour at the pro rata rate from 9:00 P. M. to 10:00 P. M. account of being suspended from completing his tour, in accord with Regulation 4-C-1.

5—That the third trick position of Operator-Clerk be restored because the duties of the position have not been abolished in fact and that the third trick occupant of the position, W. Seymour be reimbursed for all monetary losses sustained and also be reimbursed for all expenses incurred in the exercise of seniority to another position in accord with Regulation 4-R-1(a).

6—That Relief Operator-Clerk, N. A. Thomas, whose position was abolished due to this arbitrary action on part of the Carrier,

be reimbursed for all monetary losses sustained plus any additional expense incurred due to travel and waiting time, in accord with Regulation 4-R-1(a).

EMPLOYES' STATEMENT OF FACT: Prior to the issuance of General Order No. 206, dated July 10, 1952, to become effective 9:00 P. M. July 20, 1952, the force at Frenchtown as shown in the rate structure of the current Agreement were as follows:

1—Agent, assigned hours	6:00 A. M. to 2:00 P. M.
1—Operator-Clerk assigned hours	2:00 P. M. to 10:00 P. M.
1—Operator-Clerk assigned hours	10:00 P. M. to 6:00 A. M.

With the effective date of General Order No. 206, July 20, 1952, the following change in positions and tour of duty were made:

1—Agent, assigned hours	5:00 A. M. to 1:00 P. M.
1—Operator-Clerk assigned hours	1:00 P. M. to 9:00 P. M.
(1—Operator-Clerk position abolished)	10:00 P. M. to 6:00 A. M.

As a result of this arbitrary action on part of the Carrier, the Agent, Mr. Dalrymple, a Group 1 employe was required to assume and perform the duties of the Operator-Clerk, Mr. W. Seymour, a Group 2 employe from 5:00 A. M. to 6:00 A. M. And Mr. F. J. Beyer, the second trick Operator-Clerk, a Group 2 employe was required to assume and perform the duties of the Agent, a Group 1 employe, from 1:00 P. M. to 2:00 P. M.

The Rate Structure as shown in the Agreement is in two parts; the first part listing Group 1 positions and the rate of pay applicable to each position; and the second part listing positions and rates applicable to Group 2 positions, thereby clearly indicating a line of demarcation as between the two classes.

POSITION OF EMPLOYES: There is an Agreement in effect between the parties, regulations effective September 1, 1949 and rates of pay effective February 1, 1951. There are two distinct classes of employes subject to the Agreement as provided by the SCOPE, which reads as follows:

SCOPE

"The provisions set forth in this Agreement shall constitute separate Agreements between the Pennsylvania Railroad Company and its employes, and the Baltimore and Eastern Railroad Company and its employes, of the classifications set forth below, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes classified herein.

THE PENNSYLVANIA RAILROAD COMPANY

Group 1—Station Agents
and Assistant Agents classified
herein.

Group 2—Managers and Assistant Managers, Wire Chiefs and Assistant Wire Chiefs, Train Directors and Assistants, Telegraphers, Telephone Operators (except Telephone Switchboard Operators) Block Operators, Operator-Clerks, Levermen, Printer-Operators."

BALTIMORE AND EASTERN RAILROAD COMPANY

Station Agents and Assistant
Agents Classified herein.

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 hereto 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 any such action.

CONCLUSION

The Carrier has shown that the changes in existing assignments at Frenchtown on July 20, 1952, did not violate any provisions of the applicable Agreement and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

Oral hearing is desired.

All data contained herein have been presented to the Claimants involved or to their representatives.

(Exhibits not reproduced)

OPINION OF BOARD: Frenchtown, New Jersey, a combination ticket-freight-express agency and block station, is situated on Carrier's Belvidere Delaware Branch, about midway between Trenton and Manunka Chunk, New Jersey. Prior to July 20, 1952, the ticket office and block station were in around-the-clock service seven days a week; express was handled 7:00 A. M. to 5:00 P. M. daily except Saturdays and Sundays, and freight was handled on the same days between 8:00 A. M. and 5:00 P. M. An Agent and two Operator Clerks working in three consecutive 8-hour shifts, comprised the station's work force. Agents are classified as Group 1 employees and Operator Clerks as Group 2 employees in the Agreement here involved. The Agent's regular tour of duty was 6:00 A. M. to 2:00 P. M., off Saturdays and Sundays. The second trick from 2:00 P. M. to 10:00 P. M. was covered by an Operator Clerk with Sundays and Mondays off, and the third trick from 10:00 P. M. to 6:00 A. M. by an Operator Clerk with Tuesdays and Wednesdays off. A relief Operator Clerk handled the Agent's tour of duty on Saturdays and Sundays, the Operator Clerk's second trick on Mondays, and the third trick on Tuesdays and Wednesdays. The second trick on Sundays was protected by an extra employee from Group 2.

For many years preceding July 20, 1952 business at Frenchtown was regularly conducted in a manner whereby Group 2 employees performed work of Group 1 employees and vice versa. Between 6:00 A. M. and 2:00 P. M. Mondays through Fridays, the Agent's duties involved handling of train orders, blocking of trains, operating interlocking signals or switches and related work, in addition to the station's freight, express and passenger business. Between 2:00 P. M. and 5:00 P. M. Tuesdays through Fridays, all of the above mentioned duties were performed by the Operator Clerk on the second trick, and between 5:00 P. M. and 10:00 P. M. on the same days this employee performed all of the station's business except freight and express. From 10:00 P. M. to 6:00 A. M., each day of the week, all business of the station except freight and express was handled by an Operator Clerk. On Saturdays and Sundays all of the Agent's duties above described were discharged by a relief Operator Clerk between 6:00 A. M. and 2:00 P. M.

Effective July 20, 1952, the Carrier closed the block station and ticket office at Frenchtown between 9:00 P. M. and 5:00 A. M. and rearranged the station force as follows: The Operator Clerk's position on the third trick (10:00 P. M. and 6:00 A. M.) was abolished; the tours of duty of the Agent (6:00 A. M. to 2:00 P. M.) and of the Operator Clerk (2:00 P. M. to 10:00 P. M.) were each advanced one hour; the off days of the second trick Operator Clerk were changed and the relief Operator Clerk's assignment rearranged to conform to the new schedules. The hours for handling freight and express remained the same.

The Carrier asserts that business on this branch line had been declining for several years and this condition was accentuated by the steel strike in 1952; that because of the strike it was forced to discontinue two assigned freight trains effective June 17, 1952, but retained its existing forces for a time in the expectation that business would improve. When improvement did not materialize, Frenchtown block station and ticket office were closed as above indicated and the jurisdiction of other block stations on this branch line adjusted.

Before and after July 20, 1952, an assigned passenger train was handled daily at Frenchtown block station between 5:00 A. M. and 6:00 A. M. This work was performed by the third trick Operator Clerk before his position was abolished, and on and after July 20 came within the Agent's tour of duty. Whatever blocking had been performed by the Agent between 1:00 and 2:00 P. M. before the change was thereafter handled by the second trick Operator Clerk.

The claim is that in making these changes the Carrier violated the Agreement. The Employees contend that the Agreement does not permit the Carrier to unilaterally change an Agent's tour of duty and require him to perform work belonging to and previously done by an Operator Clerk, nor to change an Operator Clerk's tour of duty and require him to perform work belonging to and previously done by an Agent. It is urged that work belonging to one class of employees under the Agreement may not be assigned to another seniority group.

The Carrier's assertion that it exercised a proper managerial function which was warranted by reduced business is met with the argument that the steel strike was of short duration and that Carrier's real purpose was to abolish the position of third trick Operator Clerk and assign his remaining work to the Agent.

A detailed examination of the extensive representations and arguments set forth in this docket leads us to the conclusion that the employee's position is not tenable. For many years before and after the Agent's were represented by Order of Railroad Telegraphers, there had been a substantial amount of interchange and overlapping of duties between Agents and Operator Clerks at Frenchtown. The successive agreements entered into between the Organization and the Carrier have not altered this practice. On the contrary, it appears to have received mutual acquiescence of the parties.

The Employees insist that acquiescence extended to the established tours of duty only and was not intended to permit a change such as has been made by the Carrier in this case. The Carrier asserts with equal force that no limitation on its admitted power to change the hours of a tour of duty have ever been indicated or implied in past negotiations and that the Agreement as written does not admit the interpretation of the Employees.

In our view it is unnecessary to resolve the conflict of understanding of whatever oral representations may have been made in the course of negotiating these successive written agreements. We are impressed by the fact that although substantial interchange and overlapping of work of the two classifications of employees at Frenchtown has continued through the years, the written Agreement does not purport to restrict the Carrier to the extent now claimed. In the light of established past practice, we are unable to find

support in the Agreement for the inference that the Carrier's authority to change an employee's tour of duty was intended to be so limited. It would be reasonable to expect that if the minds of the parties had met on such a material point they would have clearly stated in the Agreement. We are not at liberty to supply it under the guise of interpreting the Agreement. We have repeatedly held that in the interest of efficiency and economy, a carrier may abolish positions and rearrange the work unless restricted by the terms of the Agreement. See for example, Awards 6944, 7073 and 6187.

We find no support for the argument that the Carrier's action was not in fact based on sound business reasons but was prompted by a desire to arbitrarily abolish a Class 2 job and assign the blocking of a single train to a Class 1 employee. The record shows that from June 17 to August 8, 1952, no trains were operated past Frenchtown between 9:00 P. M. and 5:00 A. M., and from July 20 to October 20, 1952, a train moved through Frenchtown block station between those hours on only 12 days. In other words, for more than 90 per cent of a 4-month period there were no train movements past Frenchtown between 9:00 P. M. and 5:00 A. M. The Carrier's decision that proper exercise of its management functions required closing of the block station and ticket office during these hours was clearly justified. We conclude that an affirmative award is not permitted.

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 employee 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 Carrier's action will not be disturbed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.