Award No. 7654
Docket No. TE-7424

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:

> On account of position of Block Operator, second trick Plainwell, Mich., not being included in any regular relief assignment as required by regulation 5-G-1 (f) on Saturdays of each week during the period September 3, 1949, to November 18, 1950 inclusive; that available extra Operator or the regular incumbent of the position, Mr. F. L. Stevens, should have been assigned to that position and paid eight (8) hours at punitive rate on such days, for the reason that it has been necessary to fill this position on Saturdays of each week, for which payment was made on a Call basis with a minimum of three (3) hours' pay.

EMPLOYES' STATEMENT OF FACTS: Plainwell is a joint interlocking station operating trains for both the Pennsylvania Railroad Co. and the New York Central Railroad Co. It is located on the Grand Rapids Branch of the Ft. Wayne Division. Prior to September 1, 1949 Plainwell was a six day position, two tricks Monday to Saturday inclusive with the assigned hours of 9:30 A. M. to 5:30 P. M. for the first trick position and 5:30 P. M. to 1:30 A. M. for the second trick position. The rest day for each position Sunday.

On August 25, 1949 the Carrier posted notice stating that effective Saturday, September 3, 1949, with the inauguration of the 40 hour work week, the rest days for the first trick position would be Sunday and Monday and the rest days for the second trick position Saturday and Sunday and that the second trick position would be filled by an extra employe on Saturday of each week.

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. The following Regulations of the Agreement are invoked in support of the claim as filed.

SCOPE RULE

"The provisions set forth in this Agreement shall constitute separate Agreements between the Pennsylvania Railroad Company

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 established that under the applicable Agreement, Carrier was permitted to call Claimant to perform service on his regular assigned rest days; that the Agreement does not require Carrier to call Claimant on those days when no work is to be performed; and no provision of the applicable Agreement supports the compensation now being sought under such circumstances.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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.

All data contained herein have been presented to the Organization involved.

(Exhibits not reproduced)

OPINION OF BOARD: Plainwell, Mich., is a joint interlocking station for the Pennsylvania and New York Central. Prior to September 1, 1949, Block Operators were regularly assigned on two tricks (9:30 A. M. — 5:30 P. M. and 5:30 P. M. — 1:30 A. M.) Monday through Saturday. The station was closed on Sunday. Effective September 1, 1949, with the advent of the 40 hour week, the Carrier changed these assignments so that the first trick worked Tuesday through Saturday with Sunday and Monday as rest days and the second trick worked Monday through Friday with Saturday and Sunday off. The first trick on Monday was filled by a relief operator and the second trick on Saturday was scheduled to be filled by an extra man as it was not possible to include it in a regular assignment.

Thereafter by notice dated September 8, effective September 14, 1949, the Saturday second trick was cancelled. The basis for Carrier's action was assurance given by the New York Central that its local freight scheduled to pass Plainwell at 4:30 P. M. would thereafter meet its schedule. Accordingly, at the end of the first trick at 5:30 P. M., signals were set for Pennsylvania traffic as no other traffic was scheduled to pass Plainwell during the second trick on Saturdays.

It subsequently developed, however, that on a substantial number of Saturdays the New York Central train scheduled to pass Plainwell at 4:30 P. M., ran late and as a consequence the claimant was called on one of his rest days to handle this train. The record shows that on the several Saturdays when claimant performed this service he was paid a minimum of two hours at time and one-half and that the time actually required to perform this service was approximately ten minutes.

Claimant contends that there was in fact no change in the work of the second trick before or subsequent to September 1, 1949; that where part of the work remained the Carrier was not permitted to blank the position; and that Carrier should be required to pay 8 hours at the punitive rate for each Saturday between September 3, 1949 and November 18, 1950, on which latter date the Carrier reinstated the second trick on Saturday.

It is clear that the blanking of the second trick on Saturdays was motivated by New York Central's assurance it would meet its schedule and hence the Carrier's operations would not require the services of a block

operator after 5:30 P. M. Viewed in retrospect it appears that the Carrier's expectations were not realized except on six Saturdays in the ensuing 14 months. We should hesitate to say with the benefit of hindsight, that the Carrier was not entitled to rely on the New York Central's assurance and to continue to anticipate and expect that the New York Central would meet its established schedule. The fact that subsequent developments show these schedule failures to have been frequent cannot retroactively impair the validity of the Carrier's action on the facts and circumstances shown.

The reasoning and conclusions set forth in Award 6694, dated June 25, 1954, are particularly applicable to the issues raised in this docket and on the basis of that Award we find this claim to be without merit. The Carrier's offer of settlement on a call basis with respect to the dates of September 3, 10, and 17, 1949, which was rejected, should be renewed and paid.

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 Employes involved in this dispute are respectively carrier and employes 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's action will not be disturbed except as to September 3, 10, and 17, 1949, which will be settled on a call basis in accordance with the Opinion.

AWARD

Claim disposed of in accordance with the Opinion and Findings.

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.