

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, 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, the Agreement was violated when the Carrier arbitrarily placed in effect a proposal which had been listed with the Local Chairman and which he declined to accept and which resulted in the following claims being filed:

(1) The Carrier violated the Agreement between the parties when, commencing December 16, 1952, it unilaterally abolished the agent-block operator's position at Parkton, Maryland, assigned hours 6:30 A. M. to 2:30 P. M. (first shift); abolished the second shift block operator's position, assigned hours 2:30 P. M. to 10:30 P. M.; and in lieu of these two positions established one block operator's position with improperly assigned hours of 6:10 A. M. to 9:10 A. M. and 2:10 P. M. to 7:10 P. M., eight hours within the spread of thirteen.

(2) That the incumbent of said block operator's position so established shall now be compensated for the equivalent of five (5) hours overtime pay for each day worked from December 16, 1952 to April 13, 1953, on which date such assignment was terminated.

(3) That for each occasion any employee other than a block operator was used, was permitted or required to operate electric locks or controls for crossovers and switches, handle train orders, or perform any duties of block operator at Parkton Block Station between such dates, an extra available operator shall be paid a day's pay or if no available extra employee, then a regular employee shall be paid a call of three hours.

EMPLOYEES' STATEMENT OF FACT:

CARRIERS' PROPOSAL

Superintendent's letter dated November 29, 1952:

"Effective December 6, 1952, Parkton, Md. is to be changed from an agency to a non-agency station which will result in the abolishment of the position of Agent at that location. In order to take

and the General Chairman's letter of August 3, 1953, arrangements were being made to pay each of the aforementioned employees compensation equivalent to a call of three (3) hours for each of the dates enumerated above in connection with service performed by train service employees during the period 7:10 P. M. to 10:00 P. M., December 16, 1952 to April 13, 1953, and for which claims were properly made in accordance with the provisions of Regulation 4-T-1.

A copy of the General Manager's letter of February 1, 1955, is attached hereto and made a part hereof as Exhibit "E". The claims there listed have been paid.

It can be seen from the foregoing, therefore, that Item (3) of the Employees' Statement of Claim, quoted at the beginning of this Submission, has been disposed of in accordance with the settlement reached by the parties on the property and that the claim contained therein is not now a matter for adjudication by your Honorable Board. Item (3) of the Claim should therefore be dismissed.

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, which constitutes the applicable Agreement between the parties, 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 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 abolishment of the position of Agent at Parkton was not in violation of the applicable Agreement; that the establishment of a Block Operator position on an intermittent service basis effective December 16, 1952, was not in violation of the applicable Agreement except to the extent already admitted for which all compensation due has been paid; that the incumbent of the intermittent service Block Operator position is not entitled to the compensation claimed in Item (2) of the Employees' Statement of Claim; and that the claims made in Item (3) of the Employees' Statement of Claim have been disposed of by the parties on the property.

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: The material facts concerning claims (1) and (2) are not in dispute; claim (3) will be treated later.

A joint submission subscribed to by the parties reads as follows:

"THE PENNSYLVANIA RAILROAD

EASTERN REGION

MARYLAND DIVISION

SUBJECT: Request that position of Block Operator at Parkton, Maryland, be exempted from the provisions of Regulation 4-E-1(a) in accordance with the provisions of Regulation 4-E-1(b) by agreement in writing between the Local Chairman and Superintendent.

JOINT STATEMENT OF AGREED UPON FACTS: Effective December 16, 1952, Parkton, Md., was changed from an agency to a non-agency station, resulting in the abolishment of position of Agent at this point.

The Agent at Parkton, Md., has also been performing the duties of block operator during his tour of duty 6:30 A. M. to 2:30 P. M., while a block operator position, tour of duty 2:30 P. M. to 10:30 P. M., has been located at Parkton, Md.

Effective December 16, 1952, the tour of duty of the block operator at Parkton, Maryland, is from 6:10 A. M. to 9:10 A. M. and 2:10 P. M. to 7:10 P. M. It is the desire of the Superintendent to enter into an agreement with the Local Chairman to exempt this position from the provisions of Regulation 4-E-1 (a) in accordance with the provisions of Regulation 4-E-1 (b).

POSITION OF EMPLOYES: Since the Block Operator position at Parkton, Md., was established as a two-trick proposition, it was not established on an intermittent basis; therefore, we cannot agree to any change.

It was understood when rule 4-E-1 was revised, the carrier, the Pennsylvania Railroad, would not create any more such positions. When we negotiated a rule that said 8 hours in a spread of 10 hours, that was for Agents.

Therefore, I hereby file claim for time and one-half rate of pay for every hour the employee is required to suspend work to absorb overtime.

POSITION OF COMPANY: Rule 4-E-1 does not bear any notation that it applies to Agents only; therefore, it is our understanding that it applies to all classes of employees covered by these Regulations, making it permissible to establish and maintain this position on a split trick basis as provided under Rule 4-E-1 (a). We have readvertised this position of block operator.

It is our understanding, also, that it is permissible under Rule 4-E-1(b) to even except such positions from the provisions of Rule 4-E-1, if agreed to in writing by the Local Chairman and Superintendent, which has been done by us in a previous case on the Maryland Division and which is now in effect.

/s/ A. E. Thompson,
Local Chairman, O. of R. T.

/s/ R. W. Grigg,
Superintendent.

Baltimore, Maryland,
December 30, 1952."

The employees subsequently receded from their position that Rule 4-E-1 applied solely to agents and agreed that it had similar application to block operators. It is also agreed that there is no claim before us for restoration of the agent-block operator position or claim on behalf of any agent.

The following rules are pertinent to this discussion.

"SCOPE"

The provisions set forth in this Agreement shall constitute separate Agreements between The Pennsylvania Railroad Company and its employees, and the Baltimore and Eastern Railroad Company and its employees 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 employees classified herein.

The Pennsylvania Railroad Company

Baltimore & Eastern Railroad Company

Group 1—Station Agents and Assistant Agents Classified herein.

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."

"4-D-1. Except as otherwise provided in Regulation 4-E-1, the regularly assigned hours, as established from time to time shall constitute a day's work for Group 1 positions.

Except as otherwise provided in Regulation 4-E-1, eight (8) consecutive hours, exclusive of the meal hour shall constitute a day's work for Group 2 positions at offices where only one Group 2 shift is worked. At offices where more than one Group 2 shift is worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work for Group 2 employees."

"4-E-1. (a) At offices where only one shift is worked, eight (8) hours on duty within a spread of ten (10) consecutive hours shall constitute a day's work for employees if the regular assignment is established on the basis of intermittent service. Employees filling such assignments shall be paid at the rate of time and one-half for all time on duty in excess of eight (8) hours within a spread of ten (10) consecutive hours and also for all time on duty in excess of ten (10) hours computed continuously from the time they first report for duty until they are finally released at the end of the day. Intervals of release from duty which do not exceed one (1) hour will be considered time on duty. For hourly rated employees intermittent service is understood to mean service in cases where, during the hours of the regular assignment, such employee is entirely relieved from duty for a period or periods of more than one (1) hour's duration, and there is no work to be performed and the employee's services cannot be otherwise utilized during such period or periods.

(b) If agreed to, in writing, by the Local Chairman and the proper officer of the Company, individual assignments may be excepted from the provisions of this regulation (4-E-1)."

"4-F-1. (a) Except as otherwise provided in Regulation 4-E-1 and in paragraphs (b) and (c) of this regulation (4-F-1), time worked in excess of eight (8) hours, exclusive of meal period, on any

day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

(b) In the case of a position the rate of pay of which comprehends an assigned tour of duty of more than eight (8) hours, time worked in excess of such assigned hours on any day will be considered overtime and paid on the actual minute basis at time and one-half rate.

(c) If an employe performs work on two positions within a twenty-four (24) hour period and, under any provisions of this Agreement, he has a prior right to be used in both of such positions, he shall be paid at the straight time rate for the first eight (8) hours of service on each position. Except as otherwise provided in paragraph (b) of this regulation (4-F-1), he shall be paid at the rate of time and one-half for time worked in excess of eight (8) hours on either position so worked.

A relief employe performing work on two positions of his assignment within a twenty-four (24) hour period shall be paid at the straight time rate for the first eight (8) hours of service on each position. Except as otherwise provided in paragraph (b) of this regulation (4-F-1), he shall be paid at the rate of time and one-half for time worked in excess of eight (8) hours on either position so worked.

(d) In the case of a position the rate of pay of which comprehends an assigned tour of duty of less than eight (8) hours, time worked in excess of such assigned hours shall be paid for at the straight time rate. When the time worked on such a position on any day exceeds eight (8) hours, the provisions of paragraph (a) of this regulation (4-F-1) shall apply.

(e) Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less; and, if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

Nothing in this paragraph (e) of this regulation (4-F-1) shall apply to work performed within the regular work period."

"4-G-1. Employes shall not be required to suspend work during regular hours, nor shall they be required to suspend work, for the purpose of absorbing overtime."

The issues for determination are then:

1) did the Carrier have the right to abolish the agent-block operator position and establish a one shift office?

2) if it had such right, could it properly establish in a one shift office an assignment of 8 hours on duty within a spread of thirteen hours on the basis of intermittent service? and if (2) is answered in the affirmative

3) was the compensation paid to the employe holding the regular assignment on the basis of intermittent service proper?

There is no question but that the Carrier unilaterally abolished the agent-block operator position. This became effective, however, only after the station in question had been changed from an agency station to a non-agency station and there remained no agency work. Following sound principles laid down by this Board leads us to hold that the Carrier may, in the interests of effi-

ciency and economy of its operations, abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the Agreement, provisions which are not present here. The remaining work of the position abolished was that of a block operator and that work was assigned to and performed by the class of employees entitled thereto under the Agreement. The employees, in their submissions placed great reliance on sustaining Award 4902, involving the same parties. The finding in that case was based on a rule not present in the Agreement before us and therefore not controlling.

With respect to the second issue above, we find the language of Regulation 4-E-1 (a) to be plain and unambiguous: it provides for a regular assignment of 8 hours on duty within a spread of 10 consecutive hours if established on the basis of intermittent service and in subdivision (b) provides the method whereby an individual assignment may be excepted from the provisions of 4-E-1 (a), the operation of which method was here invoked by the Carrier but refused by the employees. The regulation then provides for the method of compensation when the spread of more than 10 hours has not been agreed to. The Carrier in bulletining this assignment knew that, in the absence of obtaining an agreed exception, it would be liable for overtime compensation for "all time on duty in excess of ten (10) hours computed continuously from the time they first report to duty until they are finally released at the end of the day."

It is therefore inescapable that the Carrier had the power to establish the type split-trick position it did and as the incumbent of that position has been compensated three hours at overtime rate for every day worked for services after the tenth hour no further payment is required. This holding of course denies the applicability of Regulation 4-G-1 concerning suspension of work for absorption of overtime.

Claim (3) arises from the situation referred to above whereby train crews were required to handle block operator duties such as operating electric locks or controls for crossovers and switches during the hours 7:10 P. M. to 10 P. M., which were formerly handled by the block operator on duty from 2:30 P. M. to 10:30 P. M., during the period from December 16, 1952 to April 13, 1953 when Carrier arranged to establish a second block operator trick, covering a period of 16 hours 6:10 A. M. to 10:10 P. M. For these duties performed by train crews the Carrier offered payment to an idle extra man or for an idle regular man not working on any day, when train crews operated the signals that were under the control of the block operator previously on duty from 7:10 P. M. to 10 P. M., for each day the office was closed during these hours, provided claims were properly progressed under Regulation 4-T-1.

"4-T-1. (a) Claims for money alleged to be due may be made only by an employee, or by the representative properly authorized by him to act in his behalf, and must be presented, in writing, to the Superintendent within sixty (60) days from the date the employee received his pay check for the pay period involved, except:

(1) Time off duty on account of furlough, sickness, disability, or leave of absence, shall extend the time limit specified in paragraph (a) of this regulation (4-T-1) by the period of such time off duty.

(2) When a claim for money alleged to be due is based on an occurrence during a period when the employee was out of active service on account of furlough, sickness, disability, or leave of absence, the claim must be made, in writing, within thirty (30) days from the date the employee resumes duty.

(b) A claim which is not made within the time limit specified in the foregoing paragraph (a) of this regulation (4-T-1), including Exceptions (1) and (2), shall not be entertained or allowed.

(c) When a claim has been presented in accordance with the foregoing paragraph (a) of this regulation (4-T-1) and is not allowed, the employee shall be notified to that effect, in writing, within thirty (30) days from the date his claim was presented. When not so notified his claim shall be allowed.

(d) When a claim is allowed, the employee and the representative properly authorized by him to act in his behalf shall be advised, in writing, the amount involved and the payroll on which the payment will be made.

(e) A claim denied in accordance with the foregoing paragraph (c) of this regulation (4-T-1) shall be considered invalid unless it is listed for discussion by the representative properly authorized by him to act in his behalf with the Superintendent within sixty (60) days after the date on which the claim was initially denied.

(f) Any adjustment growing out of claims covered by this regulation (4-T-1) shall not exceed in amount the difference between the amount actually earned by the Claimant and the amount he would have earned from the Company if he had been properly dealt with under this Agreement."

In view of the fact that the Carrier was aware it would have to pay compensation at overtime rate in claim (2) and penalty payments in claim (3) it might well be said that its whole course of action was a calculated economic risk.

We are here faced with the conflict in prior awards with respect to so called "general claims."

Employees contend that their initial claim:

"The Order of Railroad Telegraphers on the Pennsylvania Railroad does hereby make claim, that during the time Parkton Block Station is closed any trainmen or other employee, not covered by the Telegraphers Agreement, who operates the electric locks or controls for the cross-over or switches, or handles train orders, or performs any duties that was formerly performed by the Block Operator at Parkton Block Station, in violation of the Telegraphers Agreement; that an extra available employee be paid one days pay for each and every time a trainman or other employee operates these controls, or performs duty in lieu of the Block Operators; if no extra employee available, a regular employee be paid a call of three (3) hours for each and every time violation occurs."

filed on December 30, 1952, but subsequently modified to refer to occurrences taking place during the hours 7:10 P. M. to 10 P. M. was a legal blanket claim.

Carrier infers that the only properly presented claims under Regulation 4-T-1 are those filed by named employees for specific dates or occurrences and that these were paid. There is no question raised with respect to the time limit provisions of this Regulation.

Under the facts and circumstances presented in this record we believe that the filing of a general claim where the question at issue operates uniformly upon a class of employees that is readily determinable is a correct procedure. We do not interpret Regulation 4-T-1 here as to require individual employees filing with respect to every specific date or occurrence involved. The policing of an agreement, admittedly violated by Carrier, ought not be made unnecessarily difficult by requiring the filing of a multitude of claims when the admitted violation decides the issue except as to the amount of reparation due in each instance. Here the organization filed a claim on behalf of its members who did not file individually.

A joint check of the Carrier's records should be made to determine whether violations occurred between the hours of 7:10 P. M. and 10 P. M. on days when the Parkton office was closed during these hours and the affected employes paid reparations accordingly, less of course proper payments made to individual employes already compensated. To this extent claim (3) must be 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 Employee 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

The agreement was violated to the extent indicated by the Opinion.

AWARD

Claims sustained in accordance with conclusions set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.