

Award No. 8039
Docket No. TE-7459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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:

In June 1952, the Vincennes Branch was made a Secondary Track and the handling of trains by written train orders was changed to handling by verbal permission which has been substituted for written train orders, except in the case of a passenger train which must receive written permission in lieu of written train orders. On June 30, 1952 Bushrod Block Limit Station, created after May 1, 1938, was declared closed by General Order. However, Bushrod continues to be shown as a station in the time table and trains are receiving verbal permission to operate, in lieu of written train orders, from Bushrod to points on the Vincennes Branch and to points on the Bushrod Linton Summit Branch. The giving of verbal permission in lieu of written train orders is but a subterfuge to evade the penalty prescribed by Arbitration award 153. The only essential difference being that these orders are not written out by the train crews. In all other respects written records is made by Dispatchers and Operators. The work not having been abolished at Bushrod, the station has not been closed and claim is hereby made for a days pay for the oldest idle extra man or a call for an idle regular man for each verbal permission transmitted to any employe, at Bushrod, not covered by our Agreement.

EMPLOYES' STATEMENT OF FACT: Bushrod block limit station was created by General Order No. 414, April 1, 1927: Block Limit station at Bushrod was declared closed by authority of time table No. 7 on April 29, 1928 and was re-established as a block limit station by authority of time table No. 5, effective June 24, 1945. The block limit station at Bushrod was permanently closed on June 30, 1952. Time table No. 1 in effect 12:01 A. M. Sunday, Sept. 30, 1951, Page 9 shows the following:

VINCENNES BRANCH

KIRK-MANN SECONDARY TRACK

SWITZ CITY Mile Post 79.8 Siding capacity 78 cars. Block and Interlocking station.

LYONS Mile Post 83.2

[1019]

It is Carrier's position that any claims for compensation which the unnamed Claimants allege are due them from June 30, 1952, until December 20, 1952, inclusive, in order to be considered as valid claims should have been presented by the unnamed Claimants in accordance with the provisions of Regulation 4-T-1 of the applicable Agreement quoted above.

Paragraph (a) of Regulation 4-T-1 provides that time claims for pay must be turned in within sixty (60) days from the date the employe received his pay check for the pay period involved in the claim. Paragraph (b) provides that time claims not turned in within the time limit specified in paragraph (a) shall not be entertained or allowed.

Consequently, any claim presented more than 60 days after each pay check is received for that particular pay period is specifically outlawed. Under this Regulation, which was clearly intended by the parties to eliminate delay in the handling of claims for compensation and the resulting accumulation of such claims the instant claim, insofar as it purports to relate back to June 30, 1952 and then progressively extend to a date earlier than sixty (60) days prior to December 20, 1952, the date the instant claim was filed, cannot be entertained or allowed.

From the foregoing it is observed that even if it is assumed that the unnamed Claimants are entitled to the compensation which they claim, which Carrier strenuously denies, such claims for compensation cannot relate back to include that pay period between June 30, 1952 and the pay period first comprehended by the sixty (60) day rule. The Carrier desires to point out in this connection, that since the Claimants involved in this dispute are unnamed and unidentified, it is not possible to accurately determine the exact date when the claim ceases to be outlawed under this particular provision of Regulation 4-T-1.

All data contained herein has been presented to the representatives of the unnamed Claimants involved.

(Exhibits not reproduced.)

OPINION OF BOARD: The present dispute involves the meaning and application of the Award of Board of Arbitration, Arbitration No. 153, Case No. A-3521, which Award is dated December 12, 1951. That Award covered a controversy submitted to arbitration under an agreement to arbitrate (under provisions of the Railway Labor Act) dated March 28, 1951, paragraph Fifteenth of which agreement providing as follows with respect to the Award:

"Any difference arising as to the meaning, or the application of the provisions of such award shall be referred for a ruling to the Board, or to a subcommittee of the Board agreed to by the parties thereto; and such ruling when certified under the hands of at least a majority of the members of such Board, or if a subcommittee is agreed upon, at least a majority of the members of the subcommittee and when filed in the office of the clerk of the District Court of the United States for the District of New Jersey as the original award, shall be a part of and shall have the same force and effect as such original award." (Emphasis ours.)

The just-quoted provision was included in the agreement to arbitrate pursuant to the mandate of Section 8(m) of the Railway Labor Act. It follows that the Board of Arbitration that rendered the Award in Arbitration No. 153 is the tribunal vested by law and agreement of the Parties with jurisdiction to hear and determine the present dispute.

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 Claim should be dismissed in accordance with the Opinion.

AWARD

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 30th day of July, 1957.