

Award No. 9999

Docket No. TE-8738

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

(1) Carrier violated Article 1 of the Agreement when on July 5 and 8, 1955, it caused, required or permitted employes not covered by the Telegraphers' Agreement to handle (receive, copy and deliver) track car permits (Form TC) at Three Bridges, New Jersey.

(2) Carrier shall be required to compensate senior, idle telegrapher (extra in preference) on the NJ&L District for eight hours at the rate of pay applicable to Three Bridges, New Jersey for the violations occurring on the dates above set forth.

(3) Carrier shall be required to permit check of its records for the purpose of ascertaining the names of employes entitled to receive such compensation for each date of violation and for the purpose of determining any subsequent violations at Three Bridges, New Jersey.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect, collective bargaining agreements entered into by and between Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. Copies of such Agreements are on file with this Board and are by reference made a part of this submission as though copied herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer of the Carrier and is properly submissable to this Board under the provisions of the Railway Labor Act as amended.

This dispute involves interpretation of the collective bargaining Agreement as regards the transfer of work at Three Bridges, New Jersey. The work involved is that of receiving, copying and delivering track car permits which under the Carrier's rules are necessary in the operation of track motor cars. The Employes contend that such work is under the Scope Rule of the Telegraphers' Agreement exclusively reserved to the employes covered thereby. On the other hand, the Carrier contends that such work is properly performed by operators of the track motor cars.

Until March 28, 1955 at Three Bridges, New Jersey, there was one position under the Telegraphers' Agreement with the classification of agent-telephoner.

"This is all the more true where, as here, the record shows no financial loss to any of the claimants." (Emphasis ours.)

This is the same position correctly taken by the Board, also in Award No. 7212—hence, Mr. Finnin in the instant case having been made whole and suffering no financial loss, the claim herein for punitive payments must be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The alleged breach of the Agreement in this case arose because a signal maintainer and a track patrolman copied a track car permit on July 5 and 8, 1955. The Organization claims that this is work reserved exclusively to the telegraphers.

While this case was being processed on the property two other cases involving this Carrier and its Organization were before the Board. Subsequently in Awards 8146 and 8540 this Board held that on the record as presented this was not work reserved exclusively to the telegraphers. This Referee has studied the dockets in both of those cases and he is not prepared to rule that the results reached are palpably wrong. This being so under numerous decisions of this Board, we will not normally reverse a precedent established in regard to a particular Carrier and its employees.

In the instant case there is an attempt to distinguish the two previous cases. This is based on the fact that at the point these two track car permits were copied the Carrier had violated the Agreement by abolishing the telegrapher position. In fact, the Carrier had violated the Agreement and had later reestablished the position and made the telegrapher whole for any loss he sustained because of this violation. This claim is predicated on the proposition that if the Carrier had not originally violated the Agreement a telegrapher would have handled the work. However, in light of the fact that the Carrier has already compensated the person who had originally been deprived of the work and because of Awards 8146 and 8540 this Referee does not feel that the Carrier is in further violation. It is his judgment that at the time the two calls were made it was the same as if they had been made from a place where there was not telegrapher.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1961.