

Award No. 10322

Docket No. TE-8600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central Railroad of New Jersey that:

1. Carrier violated the terms of the agreement between the parties when commencing on June 8, 1953, and all subsequent dates it required or permitted Train Service Employees to perform the duties of operator under the Telegraphers' Agreement at Atlantic Highlands, New Jersey, prior to the starting time of the First Shift Ticket Agent-Operator, who was available and ready to perform the work, but was not called.

2. Carrier shall compensate Ticket Agent-Operator C. N. Busby, Relief Ticket Agent-Operator C. D. Sayre and Extra Agent-Operator W. J. Prati, Atlantic Highlands, New Jersey, for "call" payments for June 8, 1953, and all subsequent dates the work was performed by employees not under the Agreement.

EMPLOYES' STATEMENT OF FACTS: Atlantic Highlands, New Jersey, is located on the Southern Sub-Division of the Central Division of the Central Railroad of New Jersey. There was and is a freight station and a passenger station at this location. The following is a brief diagram of the inter-relationship between "MR" Matawan Tower and Atlantic Highlands station:

Sketch not reproduced.

Atlantic Highlands is in automatic block territory between Matawan and Atlantic Highlands but operates the Positive Block between Atlantic Highlands, New Jersey and the Highlands, New Jersey and is an open block station during the hours when the ticket agent-operator is on duty and block records are maintained. The following is a list of the positions and the assigned hours at Atlantic Highlands:

Agent-Operator	5:05 A.M. to 2:05 P.M.	(Monday through Saturday)
Agent-Operator	6:05 A.M. to 2:05 P.M.	(Sundays and Holidays)
Operator-Clerk	2:05 P.M. to 11:50 P.M.	(Monday through Saturday)
Operator-Clerk	3:45 P.M. to 11:50 P.M.	(Sundays and Holidays)

On December 29, 1955 letter was written to Executive Secretary Tummon of the Third Division by ORT President Leighty advising "In compliance with the rules of your Board, this letter is submitted as advance notice of the intention of this Organization to file in ex parte with your body within thirty days hereafter on behalf of our General Committee on the Central Railroad of New Jersey, an unadjusted dispute existing between this Committee and Management embodied in the following claim:" (Emphasis ours).

Article V (c) (2) of the August 21, 1954 National Agreement between the participating Eastern, Western and Southeastern Carriers and Employees represented by the fifteen cooperating Railway Labor Organizations, reads in part as follows:

"* * * except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of twelve months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate Board of Adjustment as provided in Paragraph (c) of Section 1 hereof before the claim or grievance is barred."

The rule referred to above became effective January 1, 1955 thereby terminating the twelve months period for appeal to the appropriate Board of Adjustment, December 31, 1955, and it is the feeling of this Carrier that the Organization's letter dated December 29, 1955, submitted as advance notice of intention to file Ex Parte claim, is not in compliance with that part of Article V (c) (2) requiring that an appeal be taken to the appropriate Board of Adjustment prior to December 31, 1955.

Considering all of the facts as stated herein, namely:

1. The employees involved cannot be assigned more than 9 hours under the Hours of Service Law;
2. To comply with the claim as presented by giving these employees a "call" would mean they would be in service more than 9 hours and violate the provisions of the Hours of Service Law;
3. The permission to occupy the main track is obtained by the train crew through the Towerman at Matawan, the nearest employe on duty at the time under the scope of the Telegraphers' Agreement;
4. Appeal was not filed in accordance with the provisions of Article V (c) (2) of the August 21, 1954 Agreement,

this claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employees' representatives.

OPINION OF BOARD: Claim is made for "call" payment because Conductor of Train No. 4012 at Atlantic Highlands, by use of the telephone, obtained permission from the towerman at an adjacent station to enter the main track at Atlantic Highlands.

The Engine of No. 4012 had to occupy the main track between 4:40 A. M. and 4:55 A. M., Monday through Friday, at which time Atlantic Highlands was a closed block station. The assigned hours of the Ticket Agent-Operator and Operator-Clerk at Atlantic Highlands are as follows:

Ticket Agent-Operator	5:05 A. M. to 2:05 P. M. (9 hours) except Sundays and holidays 6:05 A. M. to 2:05 P. M., Sundays and holidays
Operator-Clerk	2:50 P. M. to 11:50 P. M. (9 hours) except Sundays and holidays 3:45 P. M. to 11:50 P. M., Sundays and holidays

The Conductor of No. 4012 secured permission from the towerman (the nearest on duty Employee under the scope of the Agreement) at Matawan.

The record discloses that the Carrier's operating rules required that before occupying the main track permission be obtained from the Train Dispatcher. It also disclosed that under the Telegraphers Agreement Matawan is in a separate seniority district from the position at Atlantic Highlands and that the work at issue affected the movement of Train No. 4012 at Atlantic Highlands.

The action of the Conductor in obtaining permission to occupy the main track involved the use of the communication service to govern the movement of a train at Atlantic Highlands. It was work performed by the Agent-Operator or Operator-Clerk when on duty at Atlantic Highlands. It was Telegrapher's work. It properly belonged to the occupants of such positions at Atlantic Highlands.

Carrier relies on the Federal Hours of Service Act. It contends that the occupants of the two positions at Atlantic Highlands, namely the Agent-Operator and Operator-Clerk, each had a tour of duty of nine consecutive hours, Monday through Saturday, and under the Hours of Service Law could not be worked longer those days. The instant claim involves Three, not Two, Claimants. There is nothing in the record to suggest that on any day involved in the claim all three of the Claimants worked. Under the facts of this case, Carrier's contention is no defense to its violation of the Agreement.

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 Employees 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.