

Award No. 11527
Docket No. SG-11044

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad Company that:

The position of T & S Inspector at Cleveland, Ohio, held by P. F. Goddard, and the T & S Inspector position at New Castle, Pa., formerly held by L. W. Young, should have the monthly rates of pay substantially increased, retroactive to June 1, 1956, due to added duties and responsibilities which were added to these positions when the position of T & T Inspector, Cleveland, Ohio, was abolished. [Carrier's System Docket No. 16—Lake Region Case LR-24505]

EMPLOYES' STATEMENT OF FACTS: Prior to February 16, 1956, Mr. Ian Cipperley held the position of Inspector T&T, first trick, Euclid Avenue, Cleveland, Ohio. Effective February 16, 1956, Mr. Cipperley was transferred to an appointed position of Inspector Communications in the Office of Regional Engineer, Lake Region, Cleveland, Ohio. Effective with the close of business on March 12, 1956, the position formerly held by Mr. Cipperley was abolished.

Attached hereto and identified as Brotherhood's Exhibit No. 1 is a bulletin which shows that the position of Inspector, T&S, Cleveland, Ohio, would be abolished.

The men formerly under the supervision of Mr. Cipperley were transferred to the supervision of Inspector T&S, Harvard Avenue, Cleveland, Ohio, and Mr. J. N. Joiner, Maintainer T&T, was transferred to the supervision of Inspector T&S, New Castle, Pa.

Subsequent to February 16, 1956, one additional position of Maintainer T&T was assigned to each of the Inspectors T&S at New Castle and Cleveland.

Under date of August 3, 1956, Local Chairman J. H. Briggs wrote the following letter to Communications and Signal Supervisor G. C. Godshall:

"Please be advised that we are withdrawing our claim as covered by letter to you dated July 28, 1956, and we are presenting the following for your consideration.

substantial changes required to make negotiation of a rate increase mandatory under Article 5, Section 9 (a). Therefore, your Honorable Board can find no basis for an affirmative award on the question of whether or not a substantial change in the duties and responsibilities of the positions occurred, which question, the Carrier has shown, is the only one this Board has statutory authority to decide in this dispute.

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 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 interpretations 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 thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties 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 such action.

CONCLUSION

The Carrier has shown that under the provisions of the applicable rules of the controlling Agreement and the Railway Labor Act, as amended, the Third Division, National Railroad Adjustment Board, is without authority to grant the claim for an increase in the rates of pay of the positions involved in this dispute. The Carrier also has shown that no valid basis exists for a finding by this Board that the duties and responsibilities of the positions in question have substantially changed to the extent that negotiations by the parties to change the existing rates of pay of the positions are required under the applicable Rules Agreement. Therefore, your Honorable Board is requested to deny the Employees' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, 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 proper record of all the same.

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibits not Reproduced)

OPINION OF BOARD: Prior to February 16, 1956, Mr. Ian Cipperley held the position of T & T Inspector, first trick, at Euclid Avenue, Cleveland, Ohio. Effective that date, Mr. Cipperley was assigned to the position of Inspector, Communications, in the Office of Regional Engineer, Lake Region, Cleveland, Ohio. The position formerly held by Mr. Cipperley at Cleveland, Ohio, was abolished effective March 12, 1956.

Employees contend that a Cable Splicer and a T & T Maintainer formerly under Mr. Cipperley's supervision were each transferred to the supervision of the T & S Inspector at Harvard Avenue, Cleveland, Ohio and to the T & S Inspector at New Castle, Pennsylvania respectively: Carrier does not agree that these employees had been under Mr. Cipperley's supervision within the terms of Article 1, Section 1 of the Agreement. In addition, one other T & T Maintainer was assigned to each of the T & S Inspectors at Cleveland and New Castle after February 16, 1956.

It is the Employees' position that the T & S Inspectors at Cleveland, Ohio and at New Castle, Pennsylvania, "should have the monthly rates of pay substantially increased . . . due to added duties and responsibilities . . ." To support this position, Employees rely on a Joint Statement of Agreed Upon Facts which reads as follows:

"Ian Cipperley held position of Inspector T & T, first trick, Euclid Avenue, Cleveland, with Saturday and Sunday rest days, and effective February 16, 1956, was transferred to an appointed position of Inspector Communications in the Office of Regional Engineer, Lake Region, Cleveland, Ohio.

"The men formerly under the supervision of Mr. Cipperley, namely W. H. Hall, Cable Splicer and R. L. Ticknor, Maintainer T & T, were transferred to the supervision of Inspector T & S, Harvard Avenue, Cleveland, Ohio, and J. N. Joiner, Maintainer T & T, was transferred to the supervision of Inspector T & S, New Castle, Pa.

"Subsequent to February 16, 1956, one additional position of Maintainer T & T was assigned to each of the Inspectors T & S at New Castle and Cleveland."

The basis for the claim is Employees' allegation that Carrier violated Article 5, Section 9(a) of the Agreement, which reads as follows:

"(a) (Effective June 1, 1950) When the duties and responsibilities of an established position are substantially changed, the rate of pay and/or condition of employment may be changed for such position on the basis of like positions on the same Region, as agreed to, in writing, between the duly accredited representative and the proper officer of the Company."

It is the plain and unambiguous language of this Article 5, Section 9(a) that the rate of pay of a position "**may be changed**" when (1) the duties and responsibilities of the position is "**substantially changed**", (2) only when then "**on the basis of like positions on the same Region**" and (3) when agreed to in writing by the parties (emphasis ours).

The parties agree that this Board has no right to set a rate for the positions. We may only decide (1) whether the duties and responsibilities were substantially changed and, (2) if so, what are the like positions within the Region which may guide the parties to agree on a rate of pay. Employees have the burden of proving these two contract requirements.

The only proof offered by the Employees is the Joint Statement of Agreed Upon Facts previously quoted. The mere fact that certain employees were transferred and assigned to the supervision of the T & S Inspectors at Cleveland and New Castle does not establish the fact that their duties and responsibilities

were "substantially changed." The record does not show their duties and responsibilities before and after the assignment of the employees. We cannot assume from the Joint Statement alone that their duties and responsibilities were "substantially changed". Mere allegations of this fact, unsupported by facts, are not sufficient.

There is also nothing in the record to show like positions in the same Region which carried a rate higher than the rate paid for the positions of T & S Inspectors at Cleveland and New Castle.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1963.