

Award No. 11731

Docket No. SG-11293

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) W. F. Dobbins, Maintainer T & S 2nd trick Broad Tower Interlocking, be paid one (1) hour at pro rata rate for operating a battery switch in Penn Tower on the MA and MB batteries for the following days: December 28 and 29, 1957; January 4, 5, 11, 12, 18, 19, 25, and 26, 1958; February 1 and 2, 1958; and for every day this employee operates this battery switch under our agreement, Article 2, Section 11.

(b) The Company violated our agreement under Article 4, Section 22(a) and (4), when it extended the territory of the 2nd trick Maintainer at Broad Tower Interlocking.

(c) The Company violated our agreement under Article 2, Section 20, when it asked W. F. Dobbins to sign an agreement with the Company without representation.
[System Docket No. 67 — Philadelphia Region Case No. 78]

EMPLOYEES' STATEMENT OF FACTS: Mr. W. F. Dobbins had been regularly assigned to a signal maintenance position with headquarters at Broad Tower, Philadelphia. Additional maintenance duties were added to this position, effective December 28, 1957, and the Carrier required Mr. Dobbins to sign a statement acknowledging receipt of the additional responsibilities. On January 26, 1958, Mr. Hugh McLaughlin, Local Chairman, presented the following claim to Mr. E. T. Hammer, Supervisor C&S:

"On December 27, 1957 your office issued a letter under the heading of 'Territory for Maintainer T&S — Broad Section' PR-206, extending the territory of the 2nd trick Maintainer. This is a violation of our Agreement, Article 4, Section No. 22 (a). I consider this as an attempt to evade our Agreement in part of Article 2, Section II, and furthermore asking this 2nd trick Maintainer, namely, W. F. Dob-

CONCLUSION

The Carrier has shown that the claim in this case has not been handled properly in accordance with the applicable provisions of Article V of the August 21, 1954 Agreement and, therefore, is barred from consideration by this Board. It also has shown that the claim lacks the necessary merit to warrant a sustaining award by this Board, and, particularly, that the provisions of Article 2, Section 11, Article 2, Section 20 and Article 4, Section 22 (a) (4), of the Signalmen's Agreement, were not violated as the Employees allege.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees 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 record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims the Carrier violated the agreement by requiring W. F. Dobbins, Maintainer T & S 2nd trick Board Tower Interlocking, to operate a battery switch in Penn Tower on Penn territory and that he was entitled to one hour pro rata pay because he was required during his regular hours to work on two Sections.

The provisions of the agreement Claimant says were violated are as follows:

“ARTICLE 2, Section 11

“(Effective June 1, 1950)

“When a Maintainer during his regular hours works on two or more sections, his compensation for his regular tour of duty on that day shall include an additional allowance of one hour's pay at his regular rate. This shall not apply to employees covered by Article 5, Section 4.”

“ARTICLE 4, Section 22

“(a) When any of the following changes occur in a regular position the position shall be re-advertised:

- “(1) A change in assigned working days.
- “(2) A change in assigned starting time.
- “(3) A material change in location of headquarters.
- “(4) A material extension of territory.
- “(5) A material change in the character of a plant or section.”

"ARTICLE 2, Section 20

"Where the term 'duly accredited representative' appears in this Agreement, it shall be understood to mean the regularly constituted committee (or any member or members thereof) of the organization recognized or designated as the representative, for the purposes set forth in the Railway Labor Act as amended, of the employees covered by this Agreement."

To begin with, Carrier contends that the claim was not handled in accordance with Article V of the August 21, 1954 agreement, as the appeal from Superintendent of personnel had not been timely made. This was not raised on the property and it may be concluded that Carrier thus waived the point. See Award 8411—Daugherty. Furthermore, Joint submission of facts was more than sixty days after the claim had been denied. The point was not raised and we hold that parties waived it.

There is no proof to sustain Claimant's assertion of a violation of Article 2, Section 20.

Was the requirement that W. F. Dobbins, on the rest days of Penn territory Maintainer, go onto his territory and operate a switch, such a material extension of Dobbins' territory that it violated the provisions of Article 4, Section 22 (a).

We think not. The territories are admittedly geographically overlapping at the point of the switch. The Section 22 (a) indicates, in fact, provides, that such an addition to territory is proper where, as here, it is virtually at the same place. The time used was 15 minutes twice a week. See Award 7446—Shugrue, involving these same parties and same property.

Likewise, it follows that the Carrier could add duties to the assignment of W. F. Dobbins, as it did here, without violating the agreement so long as his duties are not substantially changed. The added duties were not substantial; the change in territory was not material. See Awards 8003—Bailer; 8278—Lynch.

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 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 20th day of September 1963.