

Award No. 13628
Docket No. TE-12661

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES
UNION (FORMERLY THE ORDER OF
RAILROAD TELEGRAPHERS)

NEW YORK CENTRAL RAILROAD—SOUTHERN
DISTRICT (OHIO CENTRAL DIVISION)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

Claim No. 1

1. The Carrier violated the terms of an Agreement by and between the parties hereto when commencing April 5, and terminating April 22, 1960, it required regularly assigned operators at Hobson, Ohio to suspend work during regular hours and use their privately owned automobiles, or an automobile furnished by the Carrier, to deliver train orders and clearances to work trains tied up at Point Pleasant, West Virginia.

2. The Carrier shall, because of the violation set forth in part 1 of this Statement of Claim, compensate Extra Operator E. L. Casebolt, who was available and entitled to perform the train order work, a day's pay for each date April 21 and 22, 1960, at the rate (brought up to date) of the 1st shift clerk-operator's position at Point Pleasant, West Virginia.

3. The Carrier shall, in addition to the foregoing, compensate an idle telegrapher on his rest day or days, a day's pay for each date April 5 through April 20, 1960, as a penalty for violating the Agreement as charged in the substantive claim.

Claim No. 2

1. The Carrier violated the terms of an Agreement between the parties hereto when on April 19 and 20, 1960, it required regularly assigned operators at Rumer, West Virginia, to suspend work during regular hours and use their privately owned automobiles to deliver train orders and clearances to a work train tied up at Buffalo, West Virginia.

2. The Carrier shall, because of the violations set forth in part 1 of this Statement of Claim, compensate Extra Operator C. W. Wills, who was available and entitled to perform the work in question, a day's pay for April 19, 1960, and Extra Operator E. L. Casebolt who likewise was available and entitled to perform the train order work, a day's pay for April 20, 1960, at the rate (brought up to date) of the agent-operator's position at Buffalo, West Virginia.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective January 1, 1955, and as otherwise amended.

CLAIM NO. 1

The facts in Claim No. 1 are: at page 78 of the parties' Agreement, as referred to above, are listed the positions existing at Hobson, Ohio and at Point Pleasant, West Virginia, on the effective date thereof. The listing reads:

Location	Shift	Classification	Hourly Rate	Monthly Rate
Hobson	1	AC-X	\$1.901	
	2	D	1.901	
	3	D	1.901	
Pt. Pleasant	1	D	1.901	
	2	D	1.901	
	3	D	1.883	
		AC-OX		\$410.16

Hobson, Ohio is located at Mile Post 263.8, Point Pleasant is located at Mile Post 276.6, 12.8 miles apart on Carrier's line between Toledo, Ohio and Charleston, West Virginia.

Hobson, Ohio, as the listing above indicates, is a three shift office. An agent-operator is assigned 7:00 A.M. - 3:00 P.M., clerk-operators are assigned 3:00 P.M. - 11:00 P.M. and 11:00 P.M. - 7:00 A.M. All are seven day positions, the rest days of which are filled by rest day relief assignments.

At a time not shown in the record of this case, but prior to the dates involved in this dispute, the Carrier discontinued the positions at Point Pleasant, West Virginia.

The record shows that on or about January 11, 1960, the Carrier, in contemplation of extensive track and road bed rehabilitation work involving the replacement of worn-out ties, relaying of new rail and reballasting the road bed, the Carrier established a one-shift operator's position at Carpenter, Ohio, to handle the train orders and clearances and other communication work in connection with the operation of work trains engaged in this work.

As the track work moved southward toward Hobson, Ohio, and out of reach of the communication office at Carpenter, the latter was closed and other train order offices were opened as the work progressed.

This method of operation was followed until the work had progressed to

And, without prejudice to the Carrier's position that claim is improperly before the Third Division, for reasons set forth before, it has also been shown that no rules of the Agreement have been violated as charged, and that

Numerous awards of the Third Division support the Carrier in that claim, as presented, is invalid, otherwise lacks merit and must be denied, or dismissed. (Exhibits not reproduced).

OPINION OF BOARD: The Carrier had discontinued the positions at Point Pleasant, West Virginia. In connection with extensive track and road bed rehabilitation work, the Carrier established temporary communication offices at various points on the line. As the work progressed, one office would be closed and another opened. When the work progressed to Point Pleasant, West Virginia, the Carrier did not open a temporary office, but rather issued instructions to the operators at Hobson to deliver train orders and clearances to the work train at Point Pleasant, using their own automobile or the automobile of the Carrier.

The Employees contend that the Carrier's action in connection with Point Pleasant was contrary to the Agreement and that the extra man who is eligible should have been called.

The Carrier cites as its prime authority Case No. 41 of the Special Board of Adjustment No. 137. Case No. 41 was between The Order of Railroad Telegraphers and the New York Central Railroad. In Case No. 41, the Special Board found that an operator was maintained at Sylvania and at Ottawa Lake. The two positions are listed in the Agreement. They are approximately 6.5 miles apart. The Board stated that on occasions the operator at Ottawa Lake issued the clearances and delivered the clearance forms to the train crew at Sylvania, and that such was not a violation of the Agreement.

There are some differences in the facts of Case No. 41 and this docket, but we do not find any fact differences that would have a bearing on the construction announced in Case No. 41.

Case No. 41 does not set out the reasoning behind their decision, but this Award does not turn on the reasoning of Case No. 41, but rather upon the fact that the controversy presented in this docket has been decided in Case No. 41 of the Special Board of Adjustment No. 137.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. H. Schulty

Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1965.