

Award No. 13925
Docket No. TE-13400

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

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

1. The installation of a hot box detector was made at Paoli Tower on September 28, 1959.
2. By introducing a type of equipment new to the work of block operators, and directing the care and use, the reading and interpretation of such equipment as the work of the block operator, the duties and responsibilities of the position of Block Operator, Paoli Tower were substantially changed.
3. That such substantial change in the duties and responsibilities of the Block Operator at Paoli Tower warrants an increase in his rate of pay under Reg. 8-A-1(c), of the current agreement.
4. That such increase in the rate of pay at Paoli Tower be effective as of June 1, 1960.

EMPLOYEES' STATEMENT OF FACTS: Paoli, Pennsylvania is located on the Carrier's Main Line, approximately 20 miles west of Philadelphia. At Paoli Tower Carrier maintains three positions of Block Operator, the incumbents of which are assigned to eight-hour shifts to cover the 24-hour period. In addition to their duties as block operators these employees are also required to perform work as towermen (levermen) operating the switches and signals that govern the train operation through Paoli Tower jurisdiction. The line through Paoli is one of the Carrier's heaviest traffic districts.

On or about September 28, 1959 the Carrier installed Servo Hot Box Detector equipment at Paoli Tower and assigned the work attaching thereto to the Block Operators, thereby substantially changing their duties and responsibilities over and above those existing prior to the installation. Regulation 8-A-1 (c) of the current agreement between the parties (which by reference is hereby made a part of this submission) provides that:

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 Agreements, which constitute the applicable Agreements between the parties, 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 interpretation 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 Agreements between the parties to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties hereto 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 any such action.

CONCLUSION

The Carrier has shown that under the Agreement no basis exists for a finding that Claimants' duties or responsibilities have substantially changed. No jurisdiction exists for granting the unnamed claimants the rate increase they request, nor to make it effective on any given date.

Therefore, the Carrier respectfully requests that your Honorable Board dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: There is in this case no dispute about the fact that the use of the Servo Hot Box Detector at Paoli Tower to scan for possible hot boxes on west bound traffic on No. 3 track added to the duties of the Block Operator position at Paoli Tower. On the property, Employees argued that the change in duties and responsibilities was substantial enough to warrant an increase in pay for the position; and, Carrier, while conceding that there had been some change in the duties, argued that they had not been changed materially enough to warrant an increase in pay. The relevant regulation in the Agreement is 8-A-1 (c), which reads:

"When the duties or responsibilities of an established Group 2 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."

The record shows that the adequacy of the change to require an increase in the rate for the position was clearly called into question by Carrier before the dispute left the property. (See "Position of Company" in "Joint Submission", dated January 23, 1961, and Manager, Labor Relations' letter to General Chairman Swilling, dated March 23, 1961). It was incumbent on Employees, then, to supply evidence in addition to the Employees'

assertions and repeated descriptions of the duties and responsibilities involved, to show that the change was substantial enough to warrant an increase. This might have been in the form of comparison with like positions in the Region, as suggested by the text of the Regulation, or in the form of other similar cases settled with increases by Carrier on the basis of changes in the duties and/or responsibilities of the operator, such as are referred to in General Chairman Swilling's letter of July 12, 1961, replying to Manager, Labor Relations' March 23rd letter, or, in some other form. But the record is devoid of adequate evidence to prove that the changes were substantial enough to warrant a change in the rate for the position and on the basis of which we might direct the parties to negotiate for an appropriate change in rate.

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 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 27th day of October 1965.