

Award No. 14734
Docket No. TE-13645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, 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:

Carrier violated agreement between Manager, Labor Relations and O.R.T. General Chairman by permitting other than members of The Order of Railroad Telegraphers to perform work usually performed by the Agent at Switz City, when extra employe M. O. Lawson was available and qualified to perform this service on September 5, 8, 9, 10, 1960, and is entitled to be compensated eight (8) hours pro rata at the Switz City rate for each of the above dates. Violation Scope, 5-E-1.

EMPLOYES' STATEMENT OF FACTS: The facts in this dispute are fairly set forth in the following "Joint Submission" prepared by the District Chairman and the Superintendent-Personnel for appeal handling on the part of the General Chairman and the Manager, Labor Relations:

THE PENNSYLVANIA RAILROAD
Southwestern Region

O. R. T. Case No. 7-61

Superintendent-Personnel
and
District Chairman, SW-1, O.R.T.

SUBJECT: "Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad that Carrier violated agreement between Manager, Labor Relations and O.R.T. General Chairman, by permitting other than members of the Order of Railroad Telegraphers to perform work usually performed by the Agent

master engaged in a telephone conversation with a local company at Switz City relative to the ordering of cars. On September 9, the Illinois Central General Agent's office informed their customer that the car, subject of the yardmaster's instructions on the 5th, was placed and ready for unloading. On the 10th this same patron advised the Illinois Central General Agent's office that the car was unloaded. Also, on the 9th and 10th, trains operated by Milwaukee Railroad moved from Sponsler to the coal pits at Linton Summit and back.

By letter dated October 10, 1960, Claimant Lawson, the District Chairman, Order of Railroad Telegraphers, presented a claim in his own behalf, identical to that quoted at the beginning of this submission, to the Superintendent, Stations, who denied it on October 18, 1960.

Under date of December 15, 1960, the District Chairman listed the claim with the Superintendent, Personnel, Southwestern Region, who denied it on January 26, 1961. Subsequently, at the request of the District Chairman, a Joint Submission covering the matter was prepared, a copy of which is attached as Exhibit "A".

At a meeting on September 7, 1961, the General Chairman presented the claim to the Manager, Labor Relations, who denied it on September 20, 1961.

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether a violation of the Understanding of August 29, 1960, or of the applicable Rules Agreement, occurred at Switz City Freight Station on September 5, 8, 9, and 10, 1960, and whether claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute was brought about because of a strike on the Pennsylvania Railroad between September 1 to 12, 1960 shutting down the entire operations of said Carrier. The Claimant herein, the regularly assigned Agent-Operator at Switz City, Indiana handled the normal duties at the joint Illinois Central Railroad and Pennsylvania Railroad operated freight and block station. During the strike period, the tracks at Switz City were permanently set and lined for independent Illinois Central train movements. The Milwaukee Road had an agreement with the Carrier herein prior to the strike whereby the Milwaukee Road was able to use the Carrier's tracks on Greene County Coal Branch upon the securing of permission from the Carrier's Agent-Operator at Switz City by telephone, which agreement was cancelled because of the strike.

Petitioners argue that the duties normally performed by the Claimant, Agent-Operator at Switz City for the Illinois Central Railroad and the Milwaukee Road Railroad, were performed by said Carriers through their own employees during said strike period and said action on the part of said Carrier in permitting the Illinois Central and Milwaukee Road to so perform said duties was a violation of the Memorandum of Understanding entered into between the parties hereto, dated August 29, 1960.

The pertinent provisions of said August 29, 1960 agreement are as follows:

"It is understood that the following will become effective if the strike materializes and will remain in effect only during the period of the strike:

"(1) All positions covered by the O.R.T. Agreement which will be affected by the strike, effective 12:01 A. M., September 1, 1960, will not be considered abolished in fact and when strike is terminated, all employees will resume duty on their respective positions.

"(2) Employees, qualified on physical characteristics, will be permitted to exercise their seniority by displacement, in accordance with the provisions of the applicable agreement, to assignments which are maintained and work during the strike.

"(3) Employees exercising displacement rights which are maintained and work during the strike, will return to their former positions they held prior to the strike so that all employees will return to their respective positions they held prior to the date of strike as provided by Item 1 of this Agreement."

This Memorandum of Understanding was evidently entered into between the parties hereto in order to maintain an orderly resumption of work on the part of all employees of the Carrier upon the termination of said strike.

The controlling issue involved herein is whether or not said Memorandum of Understanding of August 29, 1960 was violated when the Illinois Central Railroad and the Milwaukee Road through its employees performed the duties normally performed for them by the Claimant Agent-Operator at Switz City.

The Carrier's position is that (1) the Agent-Operator's position was not maintained and work during the strike, and that said understanding of agreement referred only to assignments which were maintained and work during the strike; (2) that the Carrier had no control over the Illinois Central and Milwaukee Railroads in regard to the movement of their trains at Switz City and couldn't have prevented the action of said Carriers even if it had so desired; and (3) that the work performed by the Agent-Operator at Switz City for said other Carriers could be returned to them for any reason without violating the rights of Claimant who had been performing said work.

It is undisputed that Carrier employees did not perform any work at Switz City on the dates in question. The Memorandum of Understanding of August 29, 1960 referred only to positions or assignments that were maintained and work during the strike. Further, said work performed by the Agent-Operator at Switz City was being done under agreements between the Carrier and the Illinois Central and the Milwaukee Road. It was work separate and apart from the operations of the Carrier, and said Illinois Central and Milwaukee Road could remove the work from the Carrier without violation by the Carrier of its agreement with its employees. See Award 4353.

In Award 5878, we held:

"It may not claim any right to the performance of work which was done because of agreement or arrangement with other Carriers

after discontinuance of the agreement or arrangement, no matter what the motive or reason for the discontinuance."

Therefore, it is the conclusion of this Board that the agreement was not violated and the claim must be dismissed.

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 3rd day of August 1966.