



Award No. 14970
Docket No. TE-13311

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, 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 Company, that:

Block Operator A. DeMarco is entitled to eight (8) hours at the straight time rate for time cards submitted for the following dates: September 1, 2, 5, 6, 7, 8, 9, and 12, 1960, also holiday rate for September 5, 1960.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1960, Claimant, Angelo DeMarco, was the regularly assigned first shift Block Operator, "SA" Tower, South Amboy, New Jersey. The duties of the Block Operator at South Amboy include the handling of switches and signals necessary to the movement of Pennsylvania, Central Railroad of New Jersey and Raritan River Railroad trains through the interlocking tower, and to perform related communication work.

Effective 12:01 A. M., September 1, 1960, the "SA" Tower positions were closed by the Carrier due to a strike by the Transport Workers' Union. The strike extended to September 12, 1960. On August 29, 1960, the parties here agreed beforehand, that:

"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 ORT 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 as-

"4-C-1(a) A regularly assigned Group 1 employee who, through no fault of his own, is not used on a day which is included in his regular assignment when he is available for duty shall be paid or permitted to earn not less than the amount he would have received had he performed service on his regular assignment."

The Supervising Operator denied the claims by letter dated October 17, 1960. No notification in writing of the rejection of this decision, as required by Article V, Section 1(b) of the National Agreement of August 21, 1954, was received.

By letter dated October 24, 1960, the District Chairman, Order of Railroad Telegraphers, who is also the Claimant in this case, listed a claim, identical to that quoted at the beginning of this Submission, with the Superintendent, Personnel, New York Region, who denied it by letter of November 28, 1960. 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.

In this regard, it will be noted that the Joint Statement of Agreed-Upon Facts in the Joint Submission contains the following sentence in the second paragraph thereof:

"As a result of this action, all Pennsylvania Railroad Train service at this location was discontinued, SA Block and Interlocking Station was closed and the incumbent was reverted to the extra list."

The fact is that the Claimant was not reverted to the extra list. Rather, his status was that covered by Item 1 of the above-quoted Understanding of August 29, 1960. The Claimant's assignment did not work during the strike; therefore, he was not subject to displacement by a senior employee as provided in Item 2 of said Understanding and he was not an employee displaced thereunder who would have been considered an extra employee under the provisions of Item 5.

At a meeting on April 21, 1961, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations denied the claim by letter dated April 27, 1961.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether this claim has been properly progressed on the property in accordance with Article V of the August 21, 1954 Agreement and whether, under the circumstances here present, the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1960 Claimant was the regularly assigned first shift Block Operator, "SA" Tower, South Amboy, New Jersey. Claimant's duties included operating from the tower certain electric switches located at the Raritan River interchange point and displacing the necessary signals under which other trains are prohibited from entering the block "SA" Station is a joint facility located on tracks owned by the New York & Long Branch Railroad, Train operations through "SA" Interlocking are normally conducted by the Pennsylvania, Central of New Jersey, and Raritan River Railroads. The Station is normally operated by Pennsylvania Railroad employees and maintained by the New York and Long Branch. Effective 12:01 A.M. September 1, 1960, the "SA" Tower positions

were closed by the Carrier due to a strike by the Transport Workers' Union. The strike extended to September 12, 1960, at which time all employees of Carrier resumed duties on their respective positions. During the duration of the strike, Pennsylvania Railroad did not operate any trains. However, Central Railroad of New Jersey and Raritan River Railroad continued to operate trains through "SA" Block Station Tower. Claimant was laid off during strike. During the strike, the electric locks on the switches involved were released, and the switches were hand operated by members of train crews operating in the territory. The signal circuits were arranged so that the signals normally controlled by the operator at "SA" operated automatically. Claimant contends Carrier violated the Agreement by allowing train crews to hand operate the switches at "SA" Tower during the strike.

Carrier has raised a procedural question under Article 5 of the Agreement by contending that the Organization failed to reject the decision of the Superintendent within the time limit prescribed while this matter was being handled on the property. However, the representative of the parties to this dispute have agreed that the issue may be resolved on its merits. Therefore, the procedural issue will not be discussed.

This Board finds that the facts in this dispute are substantially similar with the facts considered in Award 14734 (Dugan), and therefore, Award 14734 is controlling in this matter. We find that no Carrier trains operated during the strike; that Carrier had no control over trains of other Railway Companies that did operate; and that by agreement, all positions abolished because of the strike were restored to the respective position holders at the conclusion of the strike, as in Award 14734. Also, the work carried on by the New York and Long Branch Railroad, the Central of New Jersey and the Raritan River Railroad, was separate and apart from the operations of the Carrier herein and those Railroad companies could remove the work from this Carrier without violation by this Carrier of its agreement with its employees.

Therefore, this claim must be denied.

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 30th day of November 1966.

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