

Award No. 15434
Docket No. TE-13654

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 that Extra Operator J. S. Wheaton be allowed 8 hours' pay on the following days: September 3, 6, 7, 8, 9, 10, 1960, account Maintainer performing work at DM Bailey Avenue Block Station while DM was declared closed account TWU strike. Maintainer on duty did throw switches, properly line up the track route and give signals for the Depew Local to come off westbound Main to the DL&W connection and out; on each day claimed. Operator Wheaton's position was declared abolished and he reverted to the status of an extra man on September 3, 6, 7, 8, 9, 10. He should have been called to perform this service. Violation of the Scope Rule Regulations 5-E-1, 5-G-1(i).

EMPLOYEES' STATEMENT OF FACTS: DM Bailey Avenue Block Station is located in Carrier's Buffalo, New York Terminal District. It is a tower facility controlling movements of Pennsylvania and Delaware, Lackawanna and Western trains. All of the work relating to the operation of switches and signals at this point is exclusively assigned to employees covered by the Telegraphers' Agreement. The office is operated 24 hours per day, seven days per week.

Prior to September 1, 1960, Claimant Wheaton was the regularly assigned relief at DM Block Station. His duties consisted of operating all switches and signals in control of train movements through the interlocking plant and to perform related communication work.

Effective 12:01 A. M., September 1, 1960, the DM Block Station 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:

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: The DM Bailey Avenue Block Station, a tower facility controlling the movements of the Pennsylvania Railroad and the Delaware, Lackawanna and Western Railroad (DL&W) trains, is located in the Buffalo, New York terminal district. Prior to September 1, 1960, the operator of the tower was a Pennsylvania Railroad employee. As a result of the Transport Workers' Union strike from September 1 to September 12, 1960, the Pennsylvania Railroad track between the FW and GJ offices in the Buffalo, New York switching limits was taken out of service, and on August 31, 1960, all positions at DM were abolished. During the strike on September 3, 6, 7, 8, 9 and 10, a DL&W maintainer threw switches at the DM interlocking from the ground and gave hand signals to permit movement of DL&W trains.

The Brotherhood makes claim on behalf of J. S. Wheaton, the regularly assigned operator at the station, that since the DM is a joint facility and the switch in question is operated by the Pennsylvania Railroad employees in the DM tower, the switch should have been maintained by Mr. Wheaton during the strike.

The record is clear that the DL&W employee who handled the switches on the claim dates performed only DL&W work on its property for DL&W trains. There is no proof that this work was of service or benefit to the Pennsylvania Railroad in its operations; therefore, we find that Claimant was not properly in line for the work, and the claim is denied.

This Division considered a similar issue with facts comparable to those in the instant case in Awards 14734 and 14970. It also denied the claims for the same reason, namely, that the work in question was separate and apart from the operations of the Carriers who employed Claimants.

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 March 1967.

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