



Award No. 15567
Docket No. TE-13845

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 the Carrier violated the Telegraphers' Agreement on third (3rd) trick, November 24, 1960, when it extended the block by closing Seymour Block Station and permitted telegraphers' work to be performed by employees not covered by the Telegraphers' Agreement.

Regular assigned block operator D. H. Colglazier is entitled to eight (8) hours' pay at his regular rate. Violation Scope, 4-D-1, 4-G-1, 4-H-1 (a), 5-F-1 and 5-G-1.

EMPLOYEES' STATEMENT OF FACTS: The facts in this dispute are adequately set forth in the following record of the handling on the property. Under date of January 6, 1961, the District Chairman of the Organization lodged the claim per the following:

"Switz City, Indiana
January 6, 1961

Mr. J. S. Stewart
Superintendent-Personnel
Union Station
Indianapolis, Indiana

Dear Sir:

I have the following subject for discussion at our next regular scheduled meeting which is January 11, 1961.

'Claim of the General Committee of the Order of Railroad Telegraphers on The Pennsylvania Railroad that the Carrier violated the Telegraphers' Agreement on third (3rd) trick, November 24, 1960, when it extended the Block by closing Seymour Block Station and permitted Telegraphers'

During our discussion it was pointed out to you that had claimant been called on this date to perform the five minutes' work in question, he would have been entitled to payment of two (2) hours at the time and one-half rate of pay, as provided in Regulation 4-H-1 and that we were agreeable to allow claimant a two (2) hour payment at the time and one-half rate of pay.

This is to confirm the above offer and upon receipt of your concurrence arrangement for such payment will be made.

In the event the above offer is not agreeable, the claim as outlined in the subject is denied."

The General Chairman, by letter dated February 7, 1962, rejected the proposed offer of settlement as contained in the Manager-Labor Relations' letter of January 8, 1962.

Therefore, so far as Carrier is able to anticipate the basis of this claim, the sole question to be decided by your Honorable Board is whether, under all of the circumstances here present, Claimant D. H. Colglazier is entitled to be paid an additional eight hours at his regular straight time rate of pay for November 24, 1960.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, D. H. Colglazier, held a regular position as Relief Block Operator at Seymour, Indiana. He was given sixteen (16) hours' notice, in accordance with the Agreement, that Seymour Block Station would be closed Thanksgiving Day, November 24, 1960, a legal holiday. It was necessary because of operating conditions to permit an engineer on Extra 9867 north to copy a Train Order at a closed block station at Seymour, an employee not covered by the Telegraphers' Agreement.

It is contended by Claimant that when the Carrier permitted an employee not under the Telegraphers' Agreement to copy a train order that automatically rescinded the order to close Seymour Block Station on November 24, 1960, that since Claimant was available for the work he was entitled to be compensated eight (8) hours' pay at the punitive rate in addition to the eight (8) hours' pay already received, since Seymour Block Station was scheduled to work on holidays.

Carrier concedes that the Agreement was violated when it assigned an engineer outside of the Agreement to copy the train order, but insists that all Claimant is entitled to is a call with two hours' pay at the time and a half rate in addition to the eight (8) hours' holiday pay which he had already been paid; that the Carrier had a right to blank a position on a holiday if proper notice has been given; that the recovery would have been the minimum rate provided if he was properly called.

There appearing to be no question but that a proper notice was served in compliance with the Agreement, Carrier had the right to blank the work, though Carrier had no right to assign this work to an employee not under the Telegraphers' Agreement.

Claimant's recovery, however, is limited to a call to be paid for at the rate of time and one-half, with a minimum of two hours as provided for in the agreement.

See Award 8563 (Weston), arising on a similar issue on this same property.

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 been violated.

AWARD

Claim allowed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1967.