



Award No. 16111

Docket No. TE-15212

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

PENNSYLVANIA-READING SEASHORE LINES

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

The Scope and Agreement of Award 153 was violated on April 2, 1963, when 19 Train Order No. 41 was received and repeated by Conductor Waugaman at Newfield and completed at 1:04 P.M. for Burro Crane No. 125.

Since Newfield was abolished effective November 5, 1962, an operator should have been on duty for any movements in or around the block station as would have been before abolished and such procedure as this is in violation of Award 153. Claim was submitted in behalf of J. J. Castiglia working on the extra list of date in question and was idle on said day.

EMPLOYEES' STATEMENT OF FACTS: Newfield, New Jersey is a station on Carrier's Millville Branch extending from Camden, New Jersey, to Millville, New Jersey. The relative locations of various stations on the Millville Branch are as follows:

Stations	Miles from Camden, N. J.
Camden	0.0
Glassboro	19.0
Newfield	30.4
Millville	40.0

In Carrier's Time Table No. 7-C, effective April 30, 1961, Newfield was designated as a Block Station "in service part time" on the following basis:

"7:45 A.M. to 3:45 P.M. Daily except Saturday and Sunday and Memorial Day, May 30, Independence Day, July 4, Labor Day, September 4"

In a letter dated December 27, 1963, the General Chairman rejected the General Manager's decision.

Under date of March 25, 1964, the General Manager wrote the General Chairman attaching a copy of a statement from the Supervisor-Equipment who supervised the repairs to Burro Crane No. 125, advising him that no change would be made in the decision of November 7, 1963. A copy of the General Manager's letter and the statement of the Supervisor-Equipment are attached as Exhibits D and D-1, respectively.

Thus, so far as the Carrier is able to determine, the question to be decided by your Honorable Board is whether the Carrier properly required the copying of a train order at Newfield under the provisions of Arbitration Award No. 153, applicable to this Carrier as of June 25, 1943.

(Exhibits not reproduced.)

OPINION OF BOARD: Newfield, New Jersey's status as a Block Station was abolished on November 5, 1962. On April 2, 1963, Train Order No. 58 was copied at Newfield by an employee, so the Organization alleges, not covered by the Scope Rule of the Agreement. They also contend that this was in violation of Arbitration Award No. 153, dated December 12, 1951, which by agreement between the parties on March 21, 1955, became effective on Carrier's property.

Carrier comes forward with an affirmative defense invoking Paragraph 2 of Award No. 153, which pertains to emergencies. It alleges that the copying of the train order involved came within the purview of the term "emergency" as envisioned by the cited award.

The Organization categorically denies that an emergency existed in this case; hence, the issue is effectively framed. The pertinent portions of the cited award read:

"Except in emergencies, Train and Engine Service Employees shall not be required to copy train orders at points where, and during the hours when, Block or Telegraph or Telephone Operators are scheduled to be on duty, or at block stations which have been closed or abolished since May 1, 1938, or at block limit stations which have been established since May 1, 1938, or which may hereafter be established.

(1) The emergencies referred to shall include only storms, washouts, tornadoes, obstructions to tracks, slides, accidents, casualties, wrecks, engine or equipment failures, hot boxes, or break-in-two's, provided such cause or causes would result in serious delay and were not anticipated by the train dispatcher when the train was at the last open block or telegraph station."

The Carrier defends its position by stating that "due to an equipment failure in the disablement of Burro Crane No. 125, an emergency existed, and the Conductor could properly write the train order at Newfield."

A review of the evidence in this case does not convince us that the situation could be considered an emergency as contemplated by Award No.

153. We direct attention to that portion of the Emergency paragraph which reads, "provided such cause or causes would result in serious delay", etc. The burden of proof in establishing such a condition clearly rests on the shoulders of the Carrier. Carrier has failed to sustain this burden; hence, we will approve the Claim as submitted.

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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1968.