

Award No. 16428
Docket No. TE-15170

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, 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 following extra employes are entitled to eight (8) hours at the pro rata rate of 'BO' Block Station, for claims submitted for the following dates, on account of the first trick at 'BO' Block Station was allegedly abolished, but not in fact, as the third trick block operator was held on duty beyond his assigned hours:

Regulations 5-E-1 and 5-G-1(i):

J. P. FisherDec. 4, 1961	J. P. FisherDec. 13, 1961
D. A. Creely ...Dec. 5, 1961	D. W. O'Neill ..Dec. 18, 1961
L. P. Raymond..Dec. 7, 1961	D. K. Foulks ...Dec. 19, 1961
D. A. Creely ...Dec. 10, 1961	J. P. FisherDec. 20, 1961
F. G. Lagana ..Dec. 11, 1961	D. W. O'Neill ..Dec. 26, 1961

EMPLOYEES' STATEMENT OF FACTS: Prior to July 10, 1961, "BO" Block and Interlocking Station, Bordentown, New Jersey, was a 24-hour station operating continuously seven days per week. On July 10, 1961, the first-shift block operator (Group 2) position was abolished and the station placed on a part-time service basis, in accordance with Carrier's General Order No. 1109, as follows:

12:00 Midnight to 6:59 A.M., daily except Sunday
2:59 P.M. to 10:59 P.M., daily except Saturday and Sunday
10:59 P.M. to 12:00 Midnight, daily except Saturday.

On October 29, 1961, "BO" Station was placed on a part-time service basis as follows:

12:00 Midnight to 8:00 A.M., daily except Saturdays
4:00 P.M. to 12:00 Midnight, daily except Saturdays and Sundays

agreement to call extra Block Operators, and, accordingly, whether the Claimants are entitled to the compensation which they claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The first-trick Block Operator position having been abolished at "BO" Block Station, Bordentown, N. J., there was in December, 1961, a second-trick Block Operator from 4:00 P. M. to 12:00 Midnight and a third-trick Operator from 12:00 Midnight to 8:00 A. M. On the dates specified in the claim, the third-trick Block Operator was held on overtime for periods not exceeding 59 minutes. This was done because freight trains A-5 and A-6, which were to clear "BO" Block Station before 8:00 A. M., were late.

The Employees contend that Carrier violated the Agreement in failing to utilize extra men to perform the necessary work, and cite the following regulations:

"REGULATION 5-E-1.

So far as practicable, extra work on Group 2 assignments shall be divided equally among qualified extra employees.

An extra employe cannot claim extra work in excess of forty (40) hours in his work week if another extra or unassigned employe who has had less than forty (40) hours' work in his work week is available."

"REGULATION 5-G-1(i).

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases, by the regular employe.

To the extent extra or furloughed men may be utilized, their days off need not be consecutive; however, if they take the assignment of a regular employe, they will have as their days off the regular days off of that assignment."

According to Carrier, the work involved is part of the third-trick assignment, since the trains were scheduled to pass "BO" Block Station before 8:00 A. M.; hence, it cannot be considered as "work . . . to be performed on a day which is not part of any assignment." Therefore, Carrier concludes, it does not come within the purview of work to be performed by an extra man.

Carrier's view assumes that an assignment is not concluded until all the work scheduled for the employe is finished. But an assignment is not defined by earmarked components of work, which belong to a particular employe no matter when they are performed.

In Award No. 7654, a case involving the same parties, Carrier's position was stated quite differently than it is in the instant case. The facts there were similar, but Carrier's position included the following statements:

"This portion of Regulation 5-g-1 states in effect that where work is required to be performed on a day not a part of any assignment, it will be performed by the regular incumbent in the absence of an available extra employe. . . .

The disputed service occurred on a day which was not part of any assignment. It was not scheduled to be performed on the second trick at Plainwell on Saturday, and its occurrence on that date required the Carrier to notify an available extra man. . . ."

Although Carrier suggests it should not be bound by its former understanding of Regulation 5-G-1, what it wrote there appears to represent the intent of the Agreement. Carrier also now maintains that the use of the permissive "may" in Regulation 5-G-1(i) does not obligate it to use an extra man, and it can use "the regular employe", who at Bordentown would be the third-trick Block Operator. But the third-trick Block Operator is not "the regular employe" in connection with a first-trick assignment, and the available extra men should have been utilized.

Carrier's ex parte submission stated that one employe, F. G. Lagana, is not properly a Claimant because he would not have been able to fill the assignment on the day involved. The Employes respond that this issue was not raised on the property and it, therefore, must be excluded from the Board's consideration. We agree.

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 Employes involved in this dispute are respectively Carrier and Employes 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 19th day of June 1968.