

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19764
Docket Number TD-19752

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association:

(a) The Penn Central Company, (hereinafter referred to as "the Carrier"), violated and continues to violate the currently effective Agreement between the Pennsylvania Railroad (predecessor to the Penn Central) and the American Train Dispatchers Association effective June 1, 1960, (the Scope and Definitions, and Regulation 3-B-1, Part III thereof in particular): WHEN, subsequent to the issuance of Penn Central Timetable #2, effective December 1, 1968 (wherein the electrified territory of the Hudson Division as defined in Special Instruction 1167-A6 (pages 385 and 386) became a part of the New York Region); they permitted and/or required persons not covered by the Scope and Definitions of the currently effective Agreement to perform work as defined therein on the Hudson Division.

(b) Carrier shall now be required to compensate at the applicable Power Director's rate, on each calendar day and on each trick from **February 14, 1969** (account of retroactivity on continuing claims as limited by Regulation 7-B-1) and continuing until the violation shall **cease**, the Power Director eligible for performance of this service in accordance with seniority and **availability** from among the following named claimants: J. B. Einstein, C. L. Miller, H. B. Davall, J. B. Ley, C. C. Carrow, A. V. Santowasso, W. W. Thatcher, R. A. Grenell, J. J. Jablonsky, Robert K. Farmer, D. E. Ferrier, W. A. Rogers and J. S. Regula.

(c) The amount of compensation due each Claimant individually shall be ascertained by a joint check of the Carrier's records.

OPINION OF BOARD: The **controversey** in this case stems from the merger of the Pennsylvania and New York Central Railroads. Claimants, represented by the American Train Dispatchers Association, have been Power Directors located in Pennsylvania Station in New York City supervising the operation of the electric power distribution system of the Pennsylvania Railroad's (now Penn Central) New York Region. The merger was **consummated** on February 1, 1968. Since 1925 a group of non-agreement employees, designated as Power Supervisors, have been doing identical work on the Hudson Division of the former New York Central Railroad. By the issuance of Timetable #2, effective December 1, 1968, Carrier extended the New York Region to include the electrified territory

of the Hudson Division. Regulation 3-B-1 of the June 1, 1960 Agreement defines four separate seniority districts on the Pennsylvania Railroad for the Power Directors. It states that the seniority district of the Power Directors attached to the New York City Office shall be: "All of the electrified territory on the New York Region." This regulation also provides that no changes will be made in seniority districts except by mutual agreement.

Claimants urge that under the clear language of the Agreement the work being performed by the Power Supervisors belongs to employees represented by Petitioner. The Carrier, while agreeing with the facts outlined above, claimed that it had made organizational and operational changes in the New York Region several times since June 1, 1960, resulting for a time in the abolition of the New York Region and the installation of the Eastern Region. Carrier maintained, however, that during these changes it had always preserved the integrity of the seniority district defined in the Agreement and that this territory has not been affected by the Carrier's organizational changes. The Petitioner has presented no evidence, other than the timetable and the rules, in support of its contention that the seniority district has been changed contrary to the Rules. There is no evidence to show that the applicable agreement covers the work performed on the Hudson Division of the Carrier; further there is no evidence that the seniority district has been changed.

We note that the parties have negotiated an Implementing Agreement (January 14, 1969) relating to merger problems but that the issue herein was not dealt with. Since this Board is not empowered to write rules, it is clear that issues, such as the one before us, must be resolved in direct negotiations between the parties.

We have held on many occasions that the burden of proof in claims of this nature lies with the Petitioner: there is the absolute responsibility to show a violation of the applicable Agreement. In this case Petitioner has failed to provide evidence that the seniority district has been changed or that any other provision of the Agreement has been violated; for this reason we must deny the claim.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of ~~May~~, 1973.