NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20288
THIRD DIVISION Docket Number TE-20173

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (Formerly Transportation-Communication Division, BRAC)
(George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Transportation Company, TC-5871, that:

Claim of the General Committee of the T-C Division, BRAC, that Operator G. A. Pinckney, regularly assigned Relief Operator, Fuller, Michigan, rest days Thursday and Friday be allowed a call on the dates listed below account Train Orders copied by employees of another craft at a closed block station Hughart, Grand Rapids, Michigan, in violation of the Scope Rule and Arbitration Award No. 153.

August 6, 1971 T.O. #3
August 6, 1971 T.O. #44
August 13, 1971 T.O. #42

Claimant was available on these dates his rest days.

OPINION OF BOARD: On the dates in question, Train and Engine Service Employees copied train orders at Burton Street, Grand Rapids, Michigan. Hughart Black Station was closed on July LO, 1971. It is contended that if Hughart was an open Block Station, the orders would have been delivered directly to the trains or engines involved. Carrier states that copying of the train orders here involved was not performed at Hughart Yard, but at Burton Street, a point some distance from the old Hughart operator's location. Burton Street has never been a Block Station. Accordingly, Carrier contends chat Arbitration Award 153 fails to support the claim.

Arbitration Award No. 153 stated that Train and Engine Service Employees shall not be required to copy train orders at (1) points where, and during the hours when, Block or Telegraph or Telephone Operators are scheduled to be on duty; (2) at Block Stations which have been closed or abolished since May 1, 1938; (3) or at Block Limit Stations which have been established since May 1, 1938 or which may hereafter be established.

While Carrier denies that the Schedule Rules restrict its action, it does concede that its mobility is limited by the above cited Arbitration Award. We concur that an application of the facts of this record to that Award control the disposition of the dispute.

No useful purpose is served by a detailed analysis of the aims and purposes of the determination of Award 153 as they are fully documented by, and disputed in, the Awards cited below. It is appropriate to note, however, that certain Awards have not limited the location of an abolished Block Station to a minute and exact physical location, but, in giving effect to Award 153 have ruled that reasonable geographic extensions are permissible in considering each individual case. On the other hand, certain Awards have concurred with Carrier's contention that physical locations are merely points on the railroad if they are not Block Stations, present or past.

In this dispute, we must determine the geographic proximity of Burton Street to former Block Station Hughart to determine if, in fact, Burton Street is a reasonable extension of 'dughart. In this regard, we look to former Awards for guidance.

A number of Third Division Awards have sustained claims where the distances involved appear rather significant. In early Award 13314 a claim was sustained which considered a distance of two (2) miles. Subsequent Awards of the Division followed Award 13314 and sustained claims involving distances in excess of one mile. See for example Awards 16156, 17486 and 18019, among others. In contrast, Referees in Public Law and Special Adjustment Boards have agreed with Carrier, and have rejected the distances described above, and have commented adversely to the Third Division Awards.

For example, in two Awards of Public Law Board 310, claims were denied concerning 1½ and 3 miles. A third denial Award makes no reference to the distances involved.

In Awards of Public Law Board 550 and Special Board of Adjustment 589 claims were denied involving distances of 2.3 miles, 2,958 feet, 1,060 feet to 1½ miles, and 3 blocks, without explicit comment as to what, if any, degree of geographic removal might be tolerated.

Finally, we note a number of Awards issued by Public Law Board 520. The Referee, in those Awards, noted the conflicts between the cited Third Division Awards and those of SBA 589 and PL Board 310. Although the Referee agreed with the general principle expressed by this Division's Awards that a "Block Station" is not limited to the physical operator's office, he refused to accept those Awards as authority for finding a point one mile or more away from a Block Station as part of the station in the absence of strong proof to the contrary.

Awards of Public Law Board 520 denied all claims concerning distances of one mile or more, and also denied claims involving 3/4 and 7/10 of a mile.

However, the Referee sustained claims involving distances of 3/10 of a mile up to and including 1/2 mile.

It is difficult, indeed, to fashion an Award based upon arbitrarily contrived geographic distances, especially when there are significantly divergent views expressed by a number of highly qualified Referees.

As we view the wording of Arbitration Award 153, we are inclined to find that it did not intend to limit a Block Station, in all instances, to a minutely defined physical location. Thus, while we disagree with Carrier's view of the severe limitations of the Award, at the same time, we cannot read Award 153 as suggesting that distances of two miles were contemplated as being permissible thereunder.

Our task of considering the distances involved in this dispute is made more difficult by a fact dispute concerning that distance. During the handling of the matter on the property, the Organization described the distance as 2,000 feet. This figure was included in the Joint Statement of Facts, under "Employee's Position." In "Carrier's Position", it is merely stated that it is "... a point some distance..." We do not concur with Claimant that Carrier, in that document, specifically agreed that the distance was 2,000 feet, but surely Carrier was placed on notice of Claimant's allegation. Yet, we find nothing to suggest that, on the property, Carrier offered evidence or argument that the distance was incorrect.

The notice of intention to file an ex parte submission to this Board was filed on November 1, 1972. It was not until March 1, 1973 that a document was prepared by Carrier which stated that the distance was 3,502 feet.

Organizations and Carriers have been equally vocal (in given cases) to remind this Board that matters submitted after the notice of intention is filed are not properly considered by us. Such is the case here. Carrier had knowledge of Claimant's statement of the distance involved, and surely had opportunity to present conflicting evidence prior to Submissions here. Thus, under the long established rules of this Board, as it relates to this dispute, we must conclude that the distance involved is 2,000 feet.

Without attempting to establish any new ironclad arbitrary guidelines (which would only tend to further widen the disparity of views by the various Referees as to permissible geographic distances), but noting that we do not feel that Award 153 limits Block Stations to minutely defined physical locations, we find that the distance involved here - less than 4/10ths of a mile, falls within the parameters of Public Law Board 520. Under the circumstances, we do not find the distance an unreasonable application of Award 153 and accordingly, we will sustain 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 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: R. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.