

Award No. 1079
Docket No. TE-971

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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 schedule of agreement in effect in establishing a consolidated position of block-operator-agent at Milford Centre, Ohio, Columbus Division, that the position should be segregated into two positions and that all employees adversely affected by the action of the carrier be compensated for all monetary loss sustained."

EMPLOYEES' STATEMENT OF FACTS: "Prior to September 1, 1934, a full time position of block operator first trick, existed at Milford Centre, Ohio, Columbus Division, rate 71¾¢ per hour. There was also a position of agent at this point, the incumbent of which, in addition to agency duties at Milford Centre, performed the agency work at Woodstock, Ohio, at monthly salary of \$145.00.

"Block Operator positions were covered by agreement between the Management and Employees. First trick Block Operator Milford Centre, was in this agreement. Agents were not covered by any agreement of any nature, being considered as semi-officials.

"Effective September 1, 1934, a position of Agent-Operator was established at Milford Centre. The employee holding this position of Agent had been promoted from the telegraph group to that of Agent many years before. On September 1, 1934, he was instructed and took over the duties of first trick block-operator, in addition to his duties of Agent, at monthly rate of \$145.00. The incumbent of first trick block-operator position was instructed and exercised his seniority in the telegraph group.

"Effective the same date a position of Agent was created at Woodstock, Ohio, two hours each day, and the appointee performed part-time service at Woodstock and part-time service at Milford Centre.

"Tower building which handles interlocking at crossing with the C. C. G. & St. L., is located about 500 feet from Station building. Agent was moved from his station to the Tower, where he performed both Agent and block-operator duties. At the same time Agent from Woodstock, performed six hours service approximately in the Milford Centre Station."

CARRIER'S STATEMENT OF FACTS: "A Communication dated May 3, 1939, from the Secretary of the National Railroad Adjustment Board, Third Division, to Mr. J. M. Symes, General Manager of the Western Region, of the Pennsylvania Railroad, contains the information of receipt of 'written notice executed by Mr. E. J. Manion, President, Order of Railroad Tele-

"(2) That under the 'Schedule of Regulations—1929' the carrier properly abolished the first trick position of Block Operator-Leverman and that the employees have admitted and agreed to this action both by excluding the position at Milford Center from the application of the 'Schedule of Regulations—1936' covering Telegraph Department employees, and also by including Milford Center within the application of the Schedule of Regulations covering Agents as a position where Agents may perform Telegraphers' work as part of the duties of the Agent.

"CONCLUSION

"Therefore the carrier respectfully submits that when the position of Block Operator-Leverman at Milford Center was abolished there was no violation of any agreement between the Carrier and the employees involved herein.

"Secondly, that there is no agreement now in effect between the parties to this dispute having application to the claim of the employees and that there has been no such agreement since 1936 and the carrier therefore respectfully requests your Honorable Board to dismiss the claims of the employees in this matter.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the claimants with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: There can be little question, in light of the facts of record and previous determinations of this Board, that the position of block operator-leverman at Milford Centre was not in fact abolished, that the work involved was transferred to an employee not subject to the then prevailing agreement, and that this agreement, the so-called "Regulations—1929," was violated thereby.

In this situation the employees request, first, that the original position be restored, through the segregation of the consolidated position of block operator-agent into two positions, and second, that the employees adversely affected by the action of the carrier be compensated for all monetary loss sustained.

Since "Regulations—1929" were superseded by "Regulations—1936," which, in turn, were superseded by "Regulations—1938," and since both of these later agreements did not include the block operator-leverman position at Milford Centre subject to the 1929 agreement, the restoration of that position is beyond the authority of this Board, the functions of which do not extend to the alteration of the terms of agreements. See Awards 383 and 389.

This proceeding resolves itself, therefore, into one solely for recovery of monetary loss sustained as a result of the violation of "Regulations—1929" on September 1, 1934. While such recovery is not foreclosed by the mere fact that the 1936 agreement eliminated the position for the future, the date of that agreement, September 30, 1936, necessarily cuts off the violation as of that date and establishes a limit beyond which reparation may not be recovered.

The remaining question is whether there was a timely submission of this claim for reparation. While individual protests against the violation were made in August and September of 1934, these initial protests were dropped and did not mature into the claim now before the Board. Formal claim was not submitted until June 21, 1937, two and three-quarters years after the violation first occurred and about nine months after the negotiation of the 1936 agreement which eliminated the position involved.

Under these circumstances the carrier contends that Rule 7-A-2, the so-called "ten day rule," limits recovery to ten days prior to the filing of the claim; and since, on June 11, 1937, there was no violation of the agreement, recovery is necessarily barred. The parties are at liberty, of course, to incorporate such a cut-off rule in their agreements. There are instances where they have clearly done so. See Award 417 and awards in connection with the disposition of Dockets TE-812, TE-907, TE-935, TE-936, TE-1029, TE-1030, and TE-1031. But the rule here involved, as evidenced by the context of all the provisions of Regulations No. 6 and No. 7, covering respectively Discipline and Appeals, with which it is organically grouped, deals entirely with matters of discipline and personal grievances akin to matters of discipline. Neither by express terms nor by necessary implication does it purport to cut off recovery in connection with the application and interpretation of the rules of the agreement.

But recovery is barred in the instant proceeding because "the conditions of which complaint is made had disappeared." See Award 684. Such disappearance could result from the restoration of the position or from agreement that it be not restored. In this case such an agreement was operative as of September 30, 1936. Claim filed prior to that date would have entitled the employee to recovery from September 1, 1934; but the claim was not filed until June 21, 1937, about nine months after the violation had ceased, and can afford no basis for recovery. To hold otherwise would tend to turn this Board, in the absence of a cut-off rule, into a court of claims embracing alleged violations running back into an almost indefinite past, and would do violence to the general purposes of the Railway Labor Act as well as to the requirements of orderly procedure.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute the 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 evidence of record discloses a violation of the 1929 agreement, but affords no basis for the restoration of the position involved or for the recovery of reparation.

AWARD

Claim as to violation, prior to September 30, 1936, sustained; claim for restoration of position and for reparation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.