

Award No. 3030

Docket No. TE-2928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, 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 discontinuing of the three tricks of Block Operators at 'BA' Bayside, Ohio, attended block station effective 7:00 A.M. January 10, 1944, and the establishment of a Block Limit Station in lieu of the attended block station and transfer of the remaining duties of the block operators to employees not covered by the Telegraphers' Agreement, Part II, violated said Agreement; and the further claim that all employees who were arbitrarily removed from their positions of Block Operator at the 'BA' Bayside Block station and improperly permitted to exercise their seniority on other positions shall be restored to their former regularly assigned positions and be reimbursed for any wage loss and be paid for all necessary expenses incurred while working other positions, and all extra employees compensated for all time lost to them account being held idle during the period involved as a result thereof.

EMPLOYEES EX PARTE STATEMENT OF FACT: An Agreement bearing date of May 16, 1943, as to working conditions, rules and rates of pay, is in effect between the parties, copies of which are filed with this Board. The positions of Block Operator, 1st, 2nd and 3rd trick "BA" Bayside, O., are covered by said agreement.

The parties jointly certified to the following Statements of Fact in handling the instant claim on the property:

During the time lake season is in operation block stations are open on three tricks at "Bayside" which is located at the extreme south end of the yard at Sandusky.

The rate schedule in the Agreement covering Telegraphers effective May 16, 1943, indicates that the positions at "Bayside" are seasonal. It also indicates that the rate paid Block Operators at that point includes the handling of ground switches.

Incident to the closing of Block Station at "Bayside", train orders and Form "K" are issued to the crews through the Block Operators at Attica Junction.

Under date of January 7, 1944, General Order No. 302 was issued closing block station on three tricks at "Bayside" effective 7.00 A.M. January 10, 1944, and in lieu thereof, effective same time and date a Block Limit Station governing southward trains only was established, controlled by Signalman at Attica Junction.

During the winter season, only one local freight train is operated each way per day except Sunday, and very few extra trains are operated past this block station.

At the time the block station at "Bayside" was closed, O. J. Hotz, who was employed on first trick, displaced J. J. Hutchins on second trick at Troyton, who, in turn, took his vacation. F. J. Smith, who was on second trick at "Bayside," did not exercise seniority. N. F. Venske, who was on third trick, took his vacation. G. F. Wentzel, who was on the relief position, exercised his seniority on the Carrothers-Stack relief position displacing D. W. Springer.

Under date of January 21, 1944, Local Chairman made claim for the restoration of such positions and for compensation for loss and difference in earnings for all employees who were removed and displaced and for reimbursement of necessary additional expenses incurred while working other positions; also claim for "call time" for employees who were available when employees other than those covered by the Telegraphers' Agreement performed any of the duties covered by the Agreement.

POSITION OF EMPLOYEES: "BA" Bayside is a Block Station listed in the wage schedule of the Telegraphers' Agreement, Part II, as Block Operator positions, 1st, 2nd and 3rd tricks, rate \$.9175 per hour. Symbol designation (†), indicating: "Handles ground switches," comprehended by the scheduled rate of pay, as well as symbol @, indicating Seasonal.

Telegraphers' Agreement, Part II, specified:

Scope:

"The provisions set forth in Part II of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company and its employees of the classifications herein set forth, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the said employees in the positions classified herein." (Emphasis ours.)

And provides further:

"Provisions governing Managers, Assistant Managers, Wire Chiefs and Assistant Wire Chiefs, Train Directors and Assistants, Telegraphers, Telephone Operators (except telephone switchboard operators), Block Operators, Operator Clerks, Levermen, and Printer-Operators, employees of The Pennsylvania Railroad."

Definitions:

"The word 'employee' as used in Part II of this Agreement refers to employees covered by Part II of this Agreement and represented by the Organization signatory hereto."

The Scope Rule guarantees to the employees their working conditions, hours of service and rates of pay, with these conditions further strengthened by the Articles of Agreement negotiated between the parties as governing.

The following Articles of Agreement are invoked:

Article I, Section I. Part II

"Assignments to positions subject to Part II of this Agreement shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern."

Article IX, Section 3. Part II

"When a position covered by Part II of this Agreement is designated by a payroll classification which does not conform to the list of positions covered by Part II of this Agreement, such position shall be properly designated in accordance with such list."

Employees were properly assigned to the three tricks at "BA" Bayside, by bid and through the exercise of their seniority when positions were advertised. Their fitness and ability were recognized, and they were not removed by reason of a lack of such fitness and ability, however, after their removal, other employees not covered by the Agreement commenced and performed the work of copying train orders and Form K during the period these three tricks were held closed.

CONCLUSION

The Carrier has shown that under the applicable Agreements between the parties to this dispute the Claimants are not entitled to the compensation claimed, and that the provisions of the Agreement and other material which was cited by the General Chairman on the property fail to support the contentions of the Employees.

It is, therefore, respectfully submitted that the claim is without foundation in the applicable Agreement and should be denied.

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: Although this docket presents an extensive record, only one very narrow issue is involved. The question is: Did the designation "(a) Seasonal position" in the Rate Schedule (and reference therein to Carrier's letter of August 6, 1943) give the Carrier the right to discontinue the tricks of the Block Operators in question and assign such work as remained to employees not covered by the Agreement?

Carrier is not now in a position to urge (except for the inclusion of the word "seasonal" as hereinbefore stated) that the practice here complained of is not a violation of the Agreement. It made settlements in previous cases at the same block station upon similar complaints. The facts of these other cases are summarized in letter of H. L. Nancarrow, General Manager of Carrier dated August 6, 1943 to N. H. Huling, General Chairman of Organization as follows:

"It has been the practice in previous years, at the close of the lake navigation season to make 'BA' Block Station, Bayside, O., an unattended block station on all three tricks, and incident to making 'BA' an unattended block station, to issue train orders and Form K to engine and train service employees at that location through Block Operators at other points."

That is the precise complaint that is made in the instant case.

In these prior cases employees were compensated for the full loss sustained by closing of the stations. Because of the settlements in these other cases Carrier cannot now urge that the practice is proper. Therefore Carrier's entire case rests upon its contention that the reference to "seasonal", as heretofore stated, gave it the right to close down the station and assign remaining work to employees not covered by the Agreement.

Carrier argues that unless its position is correct, the inclusion of the word "seasonal" was superfluous and meaningless; that without its inclusion the Carrier would have the right to close down the station if the seasonal work disappears. Assuming that to be true, that does not mean that the addition of the word "seasonal" to the Rate Schedule and reference thereto in Carrier's letter gave it the right to close down the Block Station if there was remaining work to be performed and to assign such work to employees of another agreement, in the absence of an agreement between the parties authorizing this to be done. The record is barren of any discussion had on the property as to the meaning of the word "seasonal." Before this Board would be authorized in giving it a meaning which we are asked to do by Carrier, there would have to be a showing that the parties involved intended that it should be given such a meaning. Assuming that Carrier intended such a meaning, there is no proof that Organization agreed to it.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of December, 1945.