

Award No. 3031

Docket No. TE-2929

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 positions created in the 'Stadium' Switch cabin on the Philadelphia Terminal Division shall be classified as Train Director and paid a rate of pay in accordance therewith retroactive to the date created.

EMPLOYEES' EX PARTE STATEMENT OF FACT: Effective Thursday, March 19, 1942, "STADIUM" Switch Cabin was placed in service by General Order No. 113, Zone C, and designated by the Carrier as Block-Operator positions on first, second and third tricks, rate of pay \$.9323 per hour (now \$1.0225).

On March 24, 1942, the Committee registered formal protest to such classification of Block-Operator, and directed that the class of service to be performed required classification of Train Director on all three tricks to meet the provisions of the Agreement.

After several conferences on the subject matter in dispute, the Superintendent, under date of March 8, 1943, denied the request.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, copies of which are on file with this Board; Regulations and Rates of Pay effective May 1, 1938, and revised effective May 16, 1943.

Part II of said Agreement, comprehend the following classifications; reading as follows:

Schedule of Regulations and Rates of Pay for the Government of:

Managers, Assistant Managers,
Wire Chiefs and Assistant Wire Chiefs (who regularly work as
Telegraphers),
Train Directors and Assistants,
Telegraphers,
Telephone Operators (except Switchboard Operators),
Block-Operators,
Operator-Clerks,
Levermen, and
Printer-Operators,
Employees of The Pennsylvania Company.

the instant case the Carrier applied the Agreement in the usual manner by equating the work and responsibilities of the new positions in relation to the work and responsibilities of existing positions in the same district and thus determined a rate of pay of \$.9325 per hour, which the Carrier deemed commensurate with the work and responsibilities of the new positions and in conformity with the rates of existing positions. The Carrier submits that the establishment of this rate and the classification of the position at Station as block operator positions were entirely in accordance with the provisions of the applicable Agreement.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreements and to decide the present dispute in accordance therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to said Agreements and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said disputes in accordance with the Agreements between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the Agreements between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

It is respectfully submitted that the Carrier's action in classifying the positions at Stadium switch cabin as block operator positions and in paying the rate of pay of \$.9325 an hour (\$1.0225 an hour effective December 27, 1943) to the employees filling such positions of block operator did not constitute a violation of the applicable Agreement, and consequently that the unnamed Claimants are not entitled to be classified as train directors and paid a rate of pay in accordance therewith retroactive to the date the positions were created.

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: It is Organization's contention in this case that upon the establishment of the 'Stadium' Switch Cabin on March 19, 1942, employees were required to control and direct the movement of trains on the secondary tracks in question so as to constitute them Train Directors instead of Block Operators, thus entitling them to higher pay.

Organization relies upon Rule 8-C-1, providing that:

When new positions are created rates of pay will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

The record does not sustain Organization's contention that the work of the Block Operators on these secondary tracks was similar work and responsibility as that of Train Directors in the seniority district. There are only three Train Directors operating secondary tracks in the entire seniority district, and they perform their work under substantially different conditions than

here existed. The record shows that Block Operators at "Stadium" were not performing work of any material difference than operators at other points on these secondary tracks.

The proofs is therefore not sufficient to show similarity in work and responsibility of these Block Operators at "Stadium" with existing positions of Train Directors in the same seniority district.

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 Organization has failed to show similarity in work and responsibility of Block Operators at 'Stadium' with existing positions of Train Directors in the same seniority district.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

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