

Award No. 3773

Docket No. TE-3749

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD COMPANY

OHIO CENTRAL LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo:

(a) That the Carrier violated the Agreement of Understanding of June 15, 1930, when it refused and continued to refuse to place the first trick train director position at Root Street, Chicago, Illinois, on a six day week basis with no reduction in the monthly rate of pay, same to be effective as of March 1, 1945; and

(b) That all employees who have been assigned to the first trick train director position at Root Street since March 1, 1945, shall be paid the difference between the monthly rate paid for working seven days each week and what they should have been paid had the position been placed on the six day week basis effective that date with no reduction in the monthly rate and with time and one-half for working the seventh day.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of February 1, 1943 as to rules and working conditions is in effect between the parties to this dispute and copy of same is on file with your Board.

On June 15, 1930 the following Agreement of Understanding was negotiated between the parties:

"AGREEMENT OF UNDERSTANDING between The Order of Railroad Telegraphers and the New York Central Railroad concerning positions at Chicago, Ill., now known as 'Traffic Supervisors' located at Polk Street, whose duties are to supervise train movements between Polk and 61st Streets, which positions will be reclassified as 'Train Directors'.

"These positions being joint as between the New York Central Railroad and the Chicago Rock Island & Pacific Railway, each Company furnishing a man or men as may be necessary:

"It is agreed that New York Central employee or employees will be paid on a calendar month basis (\$225.00) waiving the one day off per week rule of the agreement between The Order of Railroad

rule to monthly rated telegraphers except by special agreement, copy of letter dated January 20, 1947 of Manager of Personnel of the CRI&P Rwy. is appended as Carrier's Exhibit No. 2; not reproduced.

Section 3 of the Rest Day, Sunday and Holiday Rule effective July 1, 1946 on this property conveys the same meaning and has the same effect on this property as Article 2 of the Mediation Agreement A-2070 on the CRI&P. The first trick train director position is subject to NYC Telegraphers' Agreement.

The carrier submits that the application of the Rest Day Rule to the Train Director position is a matter of negotiation between the parties.

CONCLUSION

The carrier has shown that—

1. The instant claim is a demand by the employees for an increase in rate and is a matter over which the Board has no jurisdiction.

2. The June 15, 1930 Agreement of Understanding upon which the employees base their claim actually refutes the claim and upholds the carrier's position.

3. Mediation Agreement Case A-2070 on which the employees rely was applicable on the CRI&P only to hourly rated telegraphers and specifically required further negotiations in order to make its provisions applicable to monthly rated positions.

4. The claim is not supported on any reasonable premise; if not dismissed for lack of jurisdiction, it should be denied.

OPINION OF BOARD: The General Committee claims that the Carrier has violated their agreement when it refused, as of March 1, 1945, to place the first trick train director position at Root Street, Chicago, Illinois, on a six day week basis without reduction in the monthly rate of pay. They ask that the employees affected be paid the difference between the monthly rate paid for working seven days per week and what they should have been paid had the position been placed on the six day week with no reduction in monthly rate and with time and one-half for working the seventh day.

The record discloses that the territory within which the duties of Train Director, the position with which we are here concerned, are performed is operated jointly by the New York Central Railroad Company, hereinafter referred to as the New York Central, and the Chicago, Rock Island and Pacific Railway Company, hereinafter referred to as the Rock Island.

In order to expedite train and engine movements in this joint territory between the Polk Street Tower (Root Street since April 18, 1943) and 61st Street in Chicago, these carriers jointly selected three Traffic Supervisors and appointed them effective as of February 21, 1928. One of these positions was permanently abolished on January 1, 1930. By agreement of May 7, 1943, the June 15, 1930 agreement, which referred to the Polk Street Tower, was made applicable to the Root Street location.

These positions were assigned 8 hours per day, seven days per week with a flat monthly rate to cover all services on a basis of \$225.00 per month. The first trick was assigned to the New York Central and the second trick to the Rock Island and have continuously been so filled.

At the time these positions were established the Telegraphers' agreement on the New York Central did not cover the position of Traffic Supervisor and there was nothing in their agreement preserving the seniority of an employee who would occupy it. However, the Telegraphers' agreement on the Rock Island did preserve seniority for any employee thereunder who would be assigned thereto.

Because of this situation as to seniority it was suggested by employees of the New York Central that the position be reclassified as a Train Director, a position covered by the agreement, or a Train Dispatcher, whose seniority the agreement preserved.

However, at this time there were other differences in the Telegraphers' agreement on these two roads that would affect these positions if brought thereunder. While at the time of the establishment of these positions neither Telegraphers' agreement had a provision providing for a six day week or one day of rest in seven, however, shortly thereafter, by the agreement on the New York Central effective May 16, 1928, such was provided on that road. This same agreement also provided that employees should be paid on an hourly basis. The Rock Island did not wish to have the positions reclassified but wanted to consider the occupants as their employees in order that the Telegraphers' agreement on their road would be applicable thereto.

However, in order to bring about uniform working conditions on these jointly operated positions and prevent the differences that would otherwise arise if reclassified, both as to the days of service required and the basis of pay, depending on whether the occupant was a New York Central or Rock Island employee, negotiations were entered into.

As a result of these negotiations an Agreement of Understanding was entered into on June 15, 1930 between the telegraphers on the New York Central and that carrier whereby the position of Traffic Supervisor was reclassified as a Train Director, thus bringing it within their agreement, and also agreeing that their employee or employees occupying that position should be paid on a monthly basis. It also waived the one day off per week rule of their agreement until such time as this rule should be granted to the Rock Island employees.

This agreement is as follows:

"AGREEMENT OF UNDERSTANDING between The Order of Railroad Telegraphers and the New York Central Railroad concerning positions at Chicago, Ill., now known as 'Traffic Supervisors' located at Polk Street, whose duties are to supervise train movements between Polk and 61st Streets, which positions will be reclassified as 'Train Directors'.

These positions being joint as between the New York Central Railroad and the Chicago Rock Island & Pacific Railway, each Company furnishing a man or men as may be necessary:

It is agreed that New York Central employee or employees will be paid on a calendar month basis (\$225.00) waiving the one day off per week rule of the agreement between The Order of Railroad Telegraphers and the New York Central Railroad until such time as the so-called six day week privilege is granted to Chicago Rock Island & Pacific Railway employees coming under the scope of The Order of Railroad Telegraphers Agreement."

The purpose of this agreement is self-evident. It was intended to equalize the differences as to the basis of pay and days of work that would have arisen in regard to these positions under the separate agreements of the telegraphers on the two roads. It was to make uniform the working conditions thereof. It was necessary that this be done in order to get the Rock Island to agree to the reclassification.

On July 13, 1945 the Rock Island entered into a Mediation Agreement in case A-2070, effective March 1, 1945, granting a six day week privilege to its employees coming under the scope of the Telegraphers' agreement on that road. However, this agreement expressly provides by Article 2 thereof as follows: "Nothing in this agreement shall apply to positions paid on a monthly basis unless otherwise agreed between the management and the committee on the individual carrier."

Article 2 of that agreement applies to the position of Traffic Director for which the Rock Island furnishes an employe on the second trick of this joint position. No agreement has been made on the Rock Island extending the six day week thereto.

It is the General Committee's thought that since this Mediation agreement extends to employes coming under the scope of The Order of Railroad Telegraphers on the Rock Island the privilege of the six day week that the requirements of the agreement of June 15, 1930 have been fulfilled as it relates thereto.

However, we must construe the language used in the agreement of June 15, 1930 in the light of and in relation to the purpose for which it was negotiated, that is, to keep uniform the working arrangements on this jointly operated position. That is, to keep the differences existing on the two roads, because of separate agreements, from affecting these positions. Considered in that light the agreement can have no other meaning than that the employes referred to therein are those previously referred to in the agreement and for which the agreement was made, namely, Train Directors. To hold otherwise would create on these positions the very thing the parties were seeking to avoid; that is, a lack of uniformity in work and pay. Since the Rock Island has not seen fit to extend the six day week privilege to those employes on that line we find the claim to be without merit.

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 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1948.