Award No. 4042
Docket No. TE-3916

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, 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:

1. The Carrier violated the Telegraphers' Agreement, when on January 19, 1946, second and third trick Block Operator positions at "GD" Block Station, Garland, Pa., were abolished, without at the same time abolishing all of the work, and

2. Lucile M. Schultz, an extra idle available Block Operator who filed a time slip for a day's pay on March 16, 1946 when Train Order No. 281 was handled at "SO" through employes at another location, shall be paid.

EMPLOYES' STATEMENT OF FACTS: On January 18, 1946, "GD" Block Station was an attended Block Station on all three tricks and had under its jurisdiction "SO" a Block Limit Station, handling all communication work at "SO" as well as "GD" and blocking trains to "SO".

Effective January 15, 1946, General Order No. 510 was issued establishing "GD" an attended Block Station 7:00 A. M. to 3:00 P. M., and closing second and third tricks between 3:00 P. M. and 7:00 A. M., to become effective at 12:01 P. M., January 19, 1946, and at the same time, placing the jurisdiction and control of "SO" Block Limit Station under the Operators at "VA" Block Station from 3:00 P. M. to 7:00 A. M., by General Order No. 511.

On March 16, 1946, Train Order No. 281, was issued and placed at "SO" addressed to C&E Extra 3641 East at "SO" via "VA" Block Station and was telephoned to Engineer Smith at 10:32 P. M.

This work was formerly performed by the incumbents at "GD" on second and third trick before those tricks were closed.

Time slip was filed by Operator Lucile M. Schultz for a day's pay account being held idle on that day when she was available and ready for work.

POSITION OF EMPLOYES: An Agreement bearing date of May 16, 1943, as to working conditions and rates of pay is in effect between the Parties, copies of which are filed with this Board. This Agreement is divided into Two Parts, Part I governing Agents and Assistant Agents; Part II governing Telegraph Department Employes.

This case is governed by and under the coverage of Part II of the current Agreement.

The following Articles of Agreement, Part II, are invoked in the instant case as sustaining the claim of the Committee:

(3) This contention has no bearing on the question at issue in this case, for it is obvious that if the second trick position at "GD" Block Station had not been abolished, the telephoning of the train orders to the Enginemen at "SO" Block Limit Station might well have been handled by the Block Operator at "GD" Block Station, instead of by the Block Operator at "VA" Block Station. The fact that any given action by the Carrier would result in maintaining more Block Operator positions than would certain other action, is no basis whatsoever for holding that the former action is required by the Agreement and that the latter action is prohibited by the Agreement. From the point of view of the Employes, that theory might be ideal for the interpretation of collective agreements. The Carrier submits, however, that its actions may be tested by your Honorable Board only by their propriety or impropriety under the rules agreed upon, and not by their results—good or bad—for the employes involved.

IV. Under the Railway Labor Act, The National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement 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, First, subsection (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 dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties thereto 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

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 Employes.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 19, 1946, the Carrier operated Block Station "GD" on its line near Garland, Pennsylvania, and Block Limit Station "SO" located 5.8 miles west of Station "GD", and controlled thereby. There was operated on the same date Block Station "VA", located 10.2 miles east of Block Station "GD", so that Block Limit Station "SO" was 16 miles distant from Block Station "VA". Immediately prior to said date Block Station "GD" was operated on an around the day basis, with three tricks. On January 19, 1946, the second and third trick positions at Block Station "GD" were abolished by the unilateral act of the Carrier, and it is contended that the work at said Block Station was not, at that time, or thereafter, abolished in fact; and, as supporting this position, it is claimed that on March 16, 1946, train order 281 was handled at Block Limit Station "SO", through employes other than Block Station "GD".

In further support of the claim, it is asserted that while the abolished trick positions were maintained, employes, as a part of their regular assignment, operated ground witches from their Block Station, and that after their positions were abolished, switches were thrown by trainmen, not covered by

the Telegraphers' Agreement. The claim is that in abolishing said positions, without the abolition of the work attached thereto, the Agreement was violated. The monetary claim is confined to one in behalf of Lucille M. Schultz, an extra available Block Operator, who, it is contended, should have been permitted to handle train order 281, on March 16, 1946, and for which one day's pay is claimed.

As we understand the position of the employes, it is not denied that where the need for the work covered by a position disappears, that position may be abolished; but here the claim is that the position was abolished, while work remained; and such remaining work was performed, in part, by trainmen, not covered by the Agreement, and in one instance, March 16, 1946, a train order was put through the abolished station. In addition to this, we understand the petitioner to contend that tricks two and three at Block Station "GD" could not be abolished while work on the said tricks remained to be performed through Block Limit Station "SO"; in other words, that the work of the two stations was so connected and related that the manning of all tricks was necessary, to the extent that work of a correponding trick, in point of time, continued at either the Block Station or the Block Limit Station, controlled by the former, and could not be transferred to another Block Station, even though the work transferred was performed by employes under the Agreement. Specifically, it is contended that the control over Block Limit Station "SO", on the second and third tricks, formerly exercised by Block Station "GD", could not be transferred to Block Station "VA".

We find nothing in the controlling Agreement which, in our opinion, sustains this latter contention. We can see nothing in the Agreement which prohibits the transfer of work from one station to another, where the work transferred is still performed by employes covered by the Agreement. We think that the General Chairman agreed that this could be done "if the work of the closed block station is abolished in fact" by his letter of July 5, 1947. The docket shows that when Block Limit Station "SO" was established, it was controlled by Block Station "VA", and what was done here was only a return to that practice, as to the second and third tricks at Block Station "GD", complicated, however, by the fact that the work on said tricks transferred to "VA", could on January 19, 1946, have been performed at "GD", a point nearer Block Limit Station "SO". But, we think, all this was embraced within managerial discretion, and so long as the work was done at any one of the stations, by persons covered by the Agreement, and no work is taken out of the Agreement, there was no violation thereof. Surely the Agreement was not intended to limit the Carrier in using employes in a manner calculated to obtain the best results, so long as employes under an agreement are given all the work covered by its scope. We are of the opinion, therefore, that provided all the work of tricks two and three at Block Station "GD" was in fact abolished, the Carrier did not violate the Agreement when its transferred the abolished work of said tricks, that is, control of Block Limit Station "SO", to Block Station "VA", to be performed by persons covered by the controlling Agreement herein.

This question remains: was the work of tricks two and three at Block Station "GD" in fact abolished? We are of the opinion that, applying a reasonable standard of interpretation to the undisputed facts presented, all of the work of said tricks was not, in fact, abolished. We are frequently reminded that the decisions of this Division must be based on the Agreement covering a dispute, and that we cannot go outside of the Agreement to find grounds on which a decision may be based. All this is true, but that requirement does not prevent us from applying common sense principles to the construction and interpretation of an Agreement, in order to reach a conclusion on its intended meaning.

It clearly appears that the throwing of ground switches was a part of telegraphers' regularly assigned work at Block Station "GD", on the two tricks abolished; that they did such work as a part of their regularly assigned duty; that such work remained to be performed during said tricks; and that, after claimants position was abolished, it was performed by trainmen, not covered by the controlling Agreement, but, as contended by the Carrier, as incident

to their regular work. The Carrier also contends that the throwing of ground switches was not, primarily, the work of telegraphers, and was only performed by them under a particular assignment to do such work, involving an adjustment of pay, under Section 19 of Article V of the Agreement, which reads as follows:

"(a) An employe shall not be required to throw ground switches except in cases of emergency, unless the regular duties of the position involved include performance of such service.

(b) When the duty of throwing ground switches is regularly assigned to a position, the rate of pay of such position shall be adjusted by Agreement, in writing, between the duly accredited representative and the proper officer of the Company."

The quoted rule merely provides for an adjustment of pay where telegraphers are regularly assigned the duty of throwing ground switches. It does not provide for the removal of such work from the Agreement, once it has been regularly assigned. Generally speaking, that can only be done by Agreement. In this case, inasmuch as there must have been some agreement as to that rate of pay, growing out of the assignment of this work, an agreement would seem to be necessary to change the situation created thereby, or a total abolition of the work covered thereby. Here there was no agreement, and the work of throwing ground switches remained to be performed at Block Station "GD".

It appears, too, that on March 16, 1946, a train order, unquestionably work within the Agreement, was handled through Block Station "GD" on one of the abolished tricks. This particular instance has the appearance of an emergency situation, and the record discloses that the claimant was not available to meet such emergency. However, it tends to show that work of that character remained to be done at that station, and supports the theory that all the work of the second and third tricks was not in fact, abolished. In the circumstances, we are of the opinion that when the Carrier abolished the positions attached to the second and third tricks at Block Station "GD", without abolishing in fact the work thereof, it violated the Agreement, and that the monetary claim should be sustained.

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 violated the Agreement to the extent and in the manner set out in the Agreement.

AWARD

(1) Claim sustained in accordance with Opinion and Findings.

(2) Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.