

Award No. 4053

Docket No. TE-4012

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:

1. That the Carrier violated the terms of the agreement effective May 16, 1943, when on May 13, 1946, it closed the second and third trick positions at "Bringinghurst" Block Station and transferred the work being performed on those positions to employees in a Block Station at another location.
2. That the violation having been corrected partially by the reestablishment of the second and third trick positions at "Bringinghurst" Block Station, all employees affected by the abolishment shall be compensated for the loss of earnings sustained and for all expenses suffered as a result of having to exercise seniority elsewhere.

EMPLOYEES' STATEMENT OF FACT: Prior to May 12, 1946, Block Operators were assigned on all three tricks at "Bringinghurst" Block Station, Indianapolis Division. Effective May 13, 1946, Block Station at "Bringinghurst" was abolished on second and third tricks 4:01 P. M. to 8:01 A. M.

Prior to the closing of "Bringinghurst" as a Block Station on the second and third tricks, the work of controlling and handling all work at "FLAX" a Block Limit Station, was assigned to the Block Operators at "Bringinghurst" and was part of the work of the second and third trick Block Operators. Subsequent to the closing of second and third trick positions at "Bringinghurst" this control and handling of the work was transferred to the control of the Block Operators at another location, "Clinton" Block Station. Clinton is located 24.8 miles south of "Flax" and 17.2 miles south of "Bringinghurst".

Effective May 28, 1946, the Block Operator positions at "Bringinghurst" on the second and third tricks were reestablished.

Account of assigning the control and handling the work of "Flax" Block Limit Station to the employees at "Clinton" Block Station for the period the second and third trick positions were closed at "Bringinghurst", the Local Chairman docketed claim with the Superintendent in letter of May 21, 1946 as follows:

"Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad, that the Carrier has closed Bringinghurst Block Station and turned some of the work over to employees at another location to perform, violating the Telegraphers' Agreement. Further, this violation shall be corrected by reestablishment of Bringinghurst Block Station and all employees com-

OPINION OF BOARD: Prior to May 13, 1946, the Carrier operated Block Station "Bringhurst" on its line between Louisville, Kentucky, and Logansport, Indiana, on its Indianapolis Division, which controlled Block Limit Station "Flax", 7.6 miles to the north. On the same date the Carrier operated Block Station "Clinton" on the same line, located 17.2 miles south of "Bringhurst", so that Block Limit Station "Flax" was 24.8 miles north of Block Station "Clinton". Immediately prior to said date, Block Station "Bringhurst" was operated on an around the day basis, with three tricks. On May 13, 1946, the Carrier, by unilateral action, abolished the second and third trick positions at "Bringhurst", and, according to the record, transferred all of the work of said station, on said tricks, to Block Station "Clinton", leaving in operation the first trick at "Bringhurst". At points in the employees' submission, it is claimed that all of the work at "Bringhurst" was not, in fact, abolished; but this claim is not substantiated, nor does the claim filed assert it. The claim is:

"That the Carrier violated the terms of the Agreement * * * when * * * it closed the second and third trick positions at "Bringhurst" Block Station and transferred the work being performed on those positions to employees in a Block Station at another location."

The petitioner does not contend that the work transferred to another Block Station, is performed there by employees outside of the agreement; and the claim, reduced to its simplest form is, that a Block Station, once established, cannot be abolished, and that the work there performed transferred to another Block Station, even though employees, covered by the Agreement, do the transferred work, so long as work on one trick remains, as here, and the employees of only two of the three tricks are abolished.

In this connection, it seems proper to discuss the position of the General Chairman on this subject. On February 10, 1947, a system meeting was had to discuss a similar claim, later submitted to this Division, and decided by Award No. 4042 this day made. On February 11, 1947, the Carrier officials wrote the General Chairman, in connection with said system meeting, and, among other things, said:

"At System conference above referred to, you agreed that the transfer of a block limit station from the jurisdiction of one open block station to the jurisdiction of another open block station is not a violation of any of the provisions of the Telegraphers' Agreement * * *".

To which letter, the General Chairman, on July 5, 1947, made this reply:

"It was agreed by me at system conference that the transfer of a Block Limit Station from the jurisdiction of one open block station to the jurisdiction of another block station is not a violation of the provisions of the Telegraphers' Agreement, if the work of the closed block station is abolished in fact."

From a reading of this correspondence, we conclude that the parties are in agreement except as to the meaning of the language "if the work of the closed block station is abolished in fact". We understand the petitioner to contend that, so long as any work remains to be done at a Block Station, no part of that work can be transferred to another Block Station, through the abolishment of second or third trick positions, even though such transferred work is performed by employees within the agreement. We understand its position to be that if the three trick positions at "Bringhurst" had been abolished, then the General Chairman's construction would apply, but not so when only the second and third trick positions were abolished.

Whatever may be the meaning, and the effect, if any, of the General Chairman's letter of July 5, 1947, we find nothing in the Agreement which limits the Carrier, in its managerial responsibility, in transferring work from one Block Station to another, whether that is done by the abolition of one

or two tricks, or the abolition of all tricks, with abolition of all work thereof, so long as the transferred work is performed by employes covered by the Agreement. Here there is no contention that any work remained to be done at "Bringinghurst" on the second and third tricks; and no contention that one, not covered by the Agreement, did any of the work transferred to "Clinton". Members of the Order of Telegraphers did all of said work. The scope rule is intended to guarantee to Telegraphers the work classified as such, and here no person other than a Telegrapher covered by the Agreement has performed any of the work covered by the scope rule.

In Award No. 4042 we upheld the contention there made that the work of the two tricks there abolished had not been in fact abolished, and sustained the claim on that contention. It is manifest, however, that this claim is presented on a very different situation. In that case there was no contention made that the work remaining on the first trick, not abolished, entered into the picture. The claim was that work remained to be done on the two tricks abolished. The same situation exists on the Docket being here considered. At all times the first trick positions have been maintained. We cannot agree that the Carrier may not, in its capacity of manager, abolish one or more tricks of any character of railway work, and continue the one or two tricks not abolished, or it may abolish the positions on all tricks, if there is no work to perform. We cannot hold that before a Carrier can abolish a position on one trick, and transfer the work thereof to another location, to be performed by employes covered by the same Agreement, there must be a total abolition of all tricks, and trick positions, and the work thereof, at the particular point involved. Carriers do not, and cannot efficiently, operate their lines in such manner, and we do not believe that it was ever contemplated, by any party to the controlling Agreement, that they would be required to do.

The petitioner relies strongly on Award 3030 of this Division, and we have read and studied that award. In the first place, in that case, all the tricks of a Block Station were abolished, and a Block Limit Station set up to do a part of the work of the station abolished; second, it was claimed that a part of the work abolished was performed by employes of the Carrier not covered by the Telegraphers' Agreement. In passing on the case this Board, in its Opinion, and in discussing a particular contention, said:

"Assuming that to be true, that does not mean that the addition of the word 'Seasonal' to the Rate Schedule and reference thereto in the 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 employes of another Agreement, in the absence of an agreement between the parties authorizing this to be done."

It is apparent that in Award No. 3030 this Division had before it the question of work being performed by employes covered by other Agreements. Of course, a Carrier may not abolish Telegraphers' work, and transfer it to a craft not covered by their Agreement. Here, the most that can be said is that the Carrier, in the exercise of its discretion decided to and did abolish the positions attached to two tricks at "Bringinghurst", and while they remained abolished required the work of said tricks to be performed at "Clinton" by Telegraphers covered by the same Agreement as that under which the employes at "Bringinghurst" worked. Tricks two and three at "Bringinghurst" were restored fifteen days after they were abolished. This may indicate that the Carrier exercised poor judgment when the tricks were abolished, but it does not furnish a basis for a holding that the Agreement was violated.

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 there was no violation of the Agreement.

AWARD

Claims (1 and 2) denied.

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.