

Award No. 5248
Docket No. TE-5141

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE MONONGAHELA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Monongahela Railway Company, that:

(a) The carrier violated the terms of the Telegraphers' Agreement when it declared abolished all three positions at Block Station "KN" beginning June 13, 1949, transferring the work to employees outside the Scope of the Telegraphers' Agreement at other locations, and

(b) In consequence of such violation the Block Operators who were employed at "KN" Block Station on the date of this violation shall be restored to their respective positions and paid for all time lost plus the higher rate of pay, plus travel and waiting time, plus expenses incurred, and

(c) All employees required or permitted by the carrier to work any of the above named three positions less than a full work week, as defined by the rules of the Agreement, commencing June 13, 1949, shall be paid for a full work week as required under the rules of the Agreement, plus dead-heading time and necessary expenses incurred less any time earned on any other positions.

EMPLOYEES' STATEMENT OF FACT: "KN" Tower is listed in the Wage Scale as a 6-day regular assignment, rate of pay \$.985 per hour. (With necessary adjustments.)

Prior to June 13, 1949, "KN" was an operated Tower on a three trick basis, 24-hours per day, daily except Sundays and Holidays, and had charge of and control of hand operated ground switch at north end of Madsville Siding.

On June 10, 1949, the three regular assigned employees, Hoke, Stoy and Dodd, were individually advised by letter that effective 3:45 P. M. June 13, 1949, "KN" Tower was abolished. Thereafter "KN" Tower was operated by extra force employees three and/or four days each week, except for a period from November 10, 1949 to December 1, 1949, when operated 6 days per week, properly advertised and filled by successful applicants.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, Regulations and Rates of pay effective August 1, 1947.

The following Articles of said Agreement are invoked as support to the claim of the employees:

required to establish and bulletin regularly assigned positions. Once such a position is established, there are many rules dealing with the perquisites attaching thereto, both with respect to the position itself and to the prospective and eventual holder thereof. To detail the same here would serve no purpose, for they are well known to those familiar with Clerks' Agreements and Awards of this Board. **The Agreement recognizes that not all work must be assigned to employees holding regular assignments for it has a provision with respect to the performance of work by extra employees. It also recognizes the right of the Carrier to abolish positions and prescribes the procedure to be followed in doing so. It further recognizes that vacancies in positions of less than thirty days' duration may be filled without bulletining.**

Although the Employees have pointed to many rules which they claim are violated by the Carrier's action herein, in our opinion, the rules which merit discussion in connection with this claim are 27 (b) (the so-called guarantee rule) and Rule 31 (b) providing that established positions shall not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules.

Rule 27 (b) is clearly a guarantee of six days' work per week to employees holding regular assignments, except in those weeks in which holidays occur or when reducing forces or abolishing positions. This Board has consistently held that the guarantee under the rule runs to the employee and not the position. **There is nothing in that rule which can be read or implied which requires regularly recurring work in peak periods to be assigned on a monthly basis. Hence, we find no support for the Employees' claim in this rule.** (Emphasis supplied.)

CONCLUSION: It is not controverted that the positions here involved were actually abolished in accordance with the provisions of the controlling Agreement, nor can it be controverted that the Carrier had the right under that Agreement to use extra men. Since it was known publicly and in advance that the operations of the coal mines would be curtailed for a sustained period, thereby making it apparent that if regular assignments were established there would be no work for the incumbents on the preponderance of the days or tricks, the Carrier was under no obligation, by contract or in reason, to establish regular assignments. The Guarantee Rule extends only to employees holding regular assignments.

It is therefore respectfully submitted that the position of the Carrier must be sustained, and the Employees' claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The General Committee has brought these claims on behalf of the block operators at "KN" Block Tower whose positions were abolished June 13, 1949, on the grounds that the work was assigned to persons not covered by the Scope of the Telegraphers' Agreement and that when employees worked the positions less than a full week, they should have been paid for a full work week.

Prior to June 13, 1949, the Carrier operated "KN" Tower twenty-four hours daily except Sundays and holidays. In addition to operating the signals, the employees at this Tower operated by hand ground switches for the north end of Maidsville siding. On June 13, 1949, the Carrier, by timely notice, abolished the positions at this Tower. The positions were closed for a week. Thereafter, the Carrier operated the Tower three or four days a week, or not at all, depending upon the volume of coal to be moved. Ninety-five percent of the traffic was coal. When the Tower was not operated, the Maidsville siding was not used. After June 13, except for the period of

November 10 to December 8 when the Tower was operated on a five-day basis, the positions when worked were filled by employes from the extra list.

The Employes contend that the Carrier could not abolish the positions because some work remained; and because the positions were worked regularly three days a week the Carrier was bound to make regular assignments under Article IV (k) (1) which called for six consecutive days' work.

The basic question is whether, after the positions at "KN" Block Tower were abolished, the operation of the Tower by employes from the extra list on a limited and irregular schedule was permitted by the Telegraphers' Agreement.

The periods when the positions were filled, or when operators were not employed, corresponded to the times when the mines, which this Carrier served and from which it derived substantially all of its traffic, were working or were idle. When the initial notice that the positions were abolished was issued, the mines were to be closed down. Following this initial shutdown, when the mines were worked, operators were employed from the extra list as the traffic required. It is self-evident that this work was **irregular and intermittent**. Because of the dependency of this Carrier on the volume of coal mined, it was impossible to anticipate that there would be permanent and regular work until the controversy on the mine property was settled.

There is no denial of the proposition that when the work of a position ceases, a regularly assigned position may be abolished. When the mines were closed on June 13, 1949, there was no work at "KN" Tower, and the Carrier had the right to abolish the position. Its notice abolishing the jobs was unequivocal. The employes who had held the positions exercised their seniority rights on other positions or were placed on the extra list. The record does not show an intent to suspend the assigned positions as was present in Awards 5178 and 3655.

When the mines resumed work after June 20 on a short week or intermittently, the Carrier accordingly operated the "KN" Block Tower, assigning employes to this work from the extra list. There is no specific provision of the rules defining when positions may be filled from the extra list. Article II (b) provides that "permanent new positions and permanent vacancies" shall be advertised. After June 13, 1949, and until there were reasonable grounds to believe that the mines would be worked for a reasonable length of time, there was nothing "permanent" about the positions at "KN" Tower. Article IV (1) provides that "regular assignments shall not comprehend more or less than six (6) consecutive days' service * * *." This is the "guarantee" rule respecting regular bulletined positions. But the implication is, when read with reference to permanent positions that are bulletined, that until a position embraces six consecutive days' service and may reasonably be anticipated to be permanent, it is not a position which must be bulletined and assigned regularly under the Agreement on this property. Except for the period of November 10 to December 8, there was only intermittent and irregular work or no work until March 6, 1950, when the positions were properly bulletined and assigned.

The provisions of the Agreement relied upon by the Employes relate to regular assignments, but during the periods for which the claims are made no regular assignments at "KN" Tower existed. The Seniority and Scope Rules have no application because there is no showing that any employe was utilized contrary to his standing on the seniority roster, or that any person not covered by the Agreement was employed at "KN" Tower.

The contention is made that, by reason of closing "KN" Tower at the times hereinabove mentioned, trainmen and others outside of the Scope of the Agreement handled train orders direct from the dispatcher at other locations. The record shows that on this property train orders have been handled by employes not under the Telegraphers' Agreement, and it also shows that this matter has been a subject of negotiation between the Organization

and the Carrier. At a conference on December 2, 1949, nearly six months after the positions at "KN" were abolished, the General Chairman agreed that "The present method of handling train orders would remain status quo"; and that further action would be held in abeyance pending the fulfillment of the Carrier's plans respecting the establishment of additional Towers. In the light of this agreement, we must find that there is no merit to this contention. This finding is limited to the instant claim.

For these reasons we find that the Carrier has not violated the Agreement.

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

The facts of record and the Agreement of the parties do not support the claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.