Award No. 5416
Docket No. TE-5460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania-Reading Seashore Lines, that

(1) "Landis" is a Block and Interlocking Station, the duties and responsibilities of the operation of which come within the scope of the Telegraphers' Agreement and shall be performed by employes under said Agreement classified as block operators and/or levermen.

(2) Compensation shall be allowed employes under the Agreement who have suffered a loss in earnings since the institution of this claim March 5, 1946, as a result of the improper assignment of such duties to employes having no contractual right to perform same.

EMPLOYES' STATEMENT OF FACTS: At LANDIS TOWER (Vineland, N. J.), the Central Railroad of New Jersey crosses the Pennsylvania-Reading Seashore Lines at grade. Both are single track railroads at this point.

Signals are in service governing this crossing, interlocked so as to avoid giving conflicting routes when one railroad is signalled to cross, and operated from Landis Tower, a two storied building, located at the point of crossing.

Signals are maintained in proceed position for Pennsylvania-Reading Seashore trains, and in a STOP position for Central Railroad of New Jersey trains.

In order to cross Central Railroad of New Jersey trains, signals must be operated. After securing permission from the Pennsylvania-Reading Seashore train dispatcher to cross, thereafter crossing having been made, signals must be put in stop position again.

Prior to June 26, 1927, levermen were assigned at Landis Tower 5:00 A. M. to 9:00 P. M. during the hours trains were operated by the Central Railroad of New Jersey, and these two tricks were made a part of the Agreement then in effect, governing Telegraph Department Employes. One employe from each of the railroads manned a trick as leverman.

Station at "Landis", although the Statement of Claim submitted to your Honorable Board has been changed to show that "Landis" is a Block and Interlocking Station.

The Carrier asserts that "Landis" never has had the status of a Block and Interlocking Station under any Agreement covering Telegraph Department employes of The Pennsylvania-Reading Seashore Lines. The Employes are definitely in error in implying that the Board should require the Carrier to establish a Block and Interlocking Station at "Landis" under the circumstances present in this dispute. In effect the Employes are requesting the Board to expand the applicable Agreement beyond the scope thereof as negotiated by the parties. It is a well defined principle that your Honorable Board has no such authority. See Awards 1290 and 1567 hereinbefore referred to. Moreover, your Honorable Board has held in many cases that it does not have the authority nor will it direct the establishment or restoration of a position so long as the carrier can, under the Agreement, remedy a violation by other means. In Third Division Award 4698, Referee Francis J. Robertson, the following appears in the Opinion of Board:

> "* * * However, this Board has held, and rightly so, that it will not direct the establishment of positions. How the Carrier cures a violation of an Agreement is a matter for its discretion * * *".

III. 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 the said Agreement 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 dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement 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 Agreement between the parties to this dispute, the work in question does not accrue to Telegraph Department employes of the Pennsylvania-Reading Seashore Lines; that no violation of the Agreement has occurred; and that the Claimants are not, therefore, entitled to the compensation which is claimed.

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: The claim is set forth at the beginning of this Award and need not be repeated.

There is very little dispute regarding the facts on which the claim depends and those about which some controversy exists are not material to the all important issue involved, hence they will be summarized in general terms as briefly as the state of the record will permit.

The third and fourth paragraphs of the Carrier's statement of facts accurately describe the operation at Vineland (Landis), New Jersey, on the date of the filing of the claim and for that reason are made part of this Opinion by reference. Other phases of the essential factual picture will be depicted in accord with our own construction of the record.

On August 13, 1871, the West Jersey Railroad, now the Pennsylvania-Reading Seashore Lines, and the Vineland Railroad Company, now the Central Railroad of New Jersey, entered into an Agreement whereby the West Jersey granted the Vineland the right to cross its lines in a manner so as not to delay its trains. Among other things this Agreement required the Vineland to keep and maintain watchmen or flagmen for signaling trains and engines at the time of the crossing of their trains and to use all suitable and proper means and devices to guard against collisions and other accidents at the time of such crossing, fitting building, arrangements and the guard to be at the expense of the Vineland. It also provided that its terms should be binding upon the successors and assigns of the respective signatories.

The agreed arrangement between the original parties to the foregoing contract continued from 1871 until CRRofNJ took over Vineland. Thereafter it continued until the first World War, or about 1917, when additional workers were used at Landis. Up to that time CRRofNJ employes only had been engaged or flag protected their trains at such point for a period of over 46 years.

Little is to be found in the record as to the status of Landis during and shortly after the end of the above mentioned war and it need not be labored. It is clear, however, that for some years the West Jersey was operated by the Pennsylvania Railroad Company.

Turning to Agreements, it is clear that effective January 1, 1922, an Agreement with employes of the railroad last named, including employes of the West Jersey, listed in its Wage Scale a second and third trick man at Landis crossing. An Agreement, effective July 1, 1925, listed a second trick man at the point. Agreements, effective December 1, 1927 and March 1, 1929 listed no positions there in their attached Wage Scales. The same holds true of a Supplemental Agreement executed on July 30, 1949, which failed to amend either the Wage Scale or the Scope Rule of the original Agreement.

In January, 1933 a reorganization established the PRSL, the Carrier presently involved. October 20, 1933, this railroad negotiated an Agreement with its telegraph employes and its Wage Scale listed no positions at Landis. Finally an Agreement, the present one, and the first with the Telegraph Department employes represented by the Order of Railroad Telegraphers, was negotiated and became effective January 1, 1945. It also failed to list any positions at Landis.

It is admitted that on February 20, 1933, by General Order, Landis was closed as an interlocking station and that since that date no employe of either the PRSL or the CRRofNJ has been assigned to the station to perform any duties in connection with the crossing movements, all work of that character being performed by conductors, flagmen and other members of the CRRofNJ train crews as indicated in the statement of facts, heretofore by reference incorporated in this Opinion.

Between 1927 and 1932 the Pennsylvania Railroad Company issued at least four, and perhaps more time tables containing instructions stating that when Landis was closed crossing signals governing movements of PRC trains would be in proceed position, except when changed to stop by CRRofNJ trainmen to protect movement of their train over the crossing.

No protest was ever made regarding the operation heretofore outlined until February 26, 1946. Then for the first time the local Chairman of the

Organization stated the Agreement was being violated at Landis and requested that it be established as a block station in lieu of what was termed the "Block Limit Station at Home." When this request was denied formal claim was filed, progressed and denied for the establishment of such point as a block station to perform the duties and responsibilities of the Telegraphers' Agreement. The claim as filed with this Division of the Board is predicated upon the premise Landis is a block and interlocking station, with work coming within the scope of the Agreement which should be performed by employes, covered by its terms, classified as block operators and/or levermen. The employes now concede, both in their submissions and in oral argument before the referee, the sole question presented is whether the work in question belongs to them under terms of the current Agreement. We therefore turn to that issue without giving consideration to other questions urged on the property or to assignments advanced by the parties as to the status of Landis as a block or interlocking station. This, we may add, without the concession would be the only question entitled to serious consideration for it is clear from our Awards (see Nos. 1290 and 4664) that when the parties have negotiated an Agreement and omitted certain positions theretofore listed in prior Agreements we cannot make a new Agreement for them or establish a position not covered by its terms.

The sum and substance of all arguments advanced by the Organization is that the work belongs to them under and by virtue of Article I of the Agreement, the Scope Rule. They make no contention any other rules of the Agreement specifically give them that right. This rule (Scope) does not purport to describe the work encompassed within it and merely provides "These rules and rates of pay shall constitute an Agreement between (naming the Carrier and the Organization) * * * and shall govern the hours of service and working conditions of the said employes in positions classified herein."

The Organization insists that work of the character here involved historically and traditionally comes within the scope of their Agreement. Assuming that this is true does not produce the answer to the present problem. What we have to decide is whether under the prevailing facts, history and tradition notwithstanding, the parties intended such work should be covered by its terms.

As supporting its position the Organization cites Awards 602, 1273, 3687, 3955, 4516, 5357, 5365 and 5384. Examination of these Awards will reveal that almost all of them deal with factual situations where the work involved had been recognized by assignment as coming within the terms of Agreements and attempts were being made to give it to other employes not covered by its terms. Be that as it may, all recognize the principle that the Agreements, similar to the one here, prohibited the Carrier from removing work covered by their terms from their operation except in the manner therein provided. We have no quarrel with those decisions and are in accord with that principle. Even so such Awards are not helpful or decisive of a case where the question for decision is whether the work involved ever came within the purview of the contract. In such a situation we have repeatedly held intention of the parties, to be determined by recourse to custom, practice and other indicia of their understanding, is the decisive factor.

No useful purpose would be served by further reference to the facts which heretofore have been so fully stated. It suffices to say that where carefully examined they disclose a situation similar to the one involved in, and are governed by, our decision in Award No. 5404 adopted July 26, 1951. Therefore, based upon what is there said and held, and the supporting Awards therein cited, we have been impelled to conclude the facts and circumstances set forth in the record of the instant case established a custom and practice clearly indicating an understanding and intention on the part of all parties that the work in question could be performed by employes of the Central Railroad of New Jersey and that it has never been covered by or included in the scope of the current Agreement.

Additional decisions of this Division of the Board not cited in Award No. 5404 but nevertheless sustaining and supporting the conclusion first announced appear in Awards 1418, 1567, 1606, 1689, 1876, 4104, 4208 and 4259.

The fact, if it is a fact, as the Organization charges, that it did not know of the custom and practice in question affords no sound ground for a contrary conclusion. As stated in Award No. 5404, see also Awards 1609 and 4208, the Organization is chargeable with knowledge of the working conditions in operation on the property and we must assume it had knowledge thereof, at least from the time it took over the Telegraph Department employes' Agreement of October 20, 1933, long prior to its negotiation of the current 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 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 record discloses no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1951.