

Award No. 6097

Docket No. TE-5889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, 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 is in violation of the agreement between the parties when on September 1, 1949, the Carrier closed Block Station at "Yellow Springs" on Saturdays and established in lieu thereof a block limit station, and

(2) beginning on the first Saturday that the agreement was violated and extending until such time as the violation is corrected the Carrier shall pay the senior available extra telegrapher one day's pay each Saturday the violation continues or if no extra operator is available then the Carrier shall pay the regular incumbent of the position eight (8) hours at time and one-half for each Saturday.

EMPLOYES' STATEMENT OF FACT: Prior to September 1, 1949, "Yellow Springs," Ohio, on the Columbus Division, was an attended block station 8:00 A. M. to 4:00 P. M. daily, except Sunday, and was a Block Limit Station 4:00 P. M. to 8:00 A. M. daily, except Sunday, and on Sunday was a Block Limit Station continuously.

General Order No. 1207, effective September 1, 1949, established "Yellow Springs" as an attended Block Station 8:00 A. M. to 4:00 P. M. daily except Saturday and Sunday, and as a Block Limit Station at all other times.

A Block Limit Station has theretofore been created at this point during the hours 8:00 A. M. to 4:00 P. M. Saturday, which did not exist prior to September 1, 1949. The Agent-Operator at this point has been taken off on Saturdays and no relief man provided to do the work formerly performed by the Agent-Operator at this point.

Under date of September 9, 1949, formal protest was made in a letter to Mr. W. H. Mapp, Superintendent, against the creation of this Block Limit Station on Saturday and claim was made for one day's pay for the oldest idle extra operator, or, if none available, then for the regular incumbent of the position at time and one-half rate, for each Saturday so operated, and case listed with the Superintendent for discussion at the meeting to be held on October 10, 1949. This claim was denied by the Superintendent's letter of September 22, 1949.

OPINION OF BOARD: Prior to September 1, 1949, Yellow Springs, Ohio, on the Springfield Branch of the Columbus Division, was an attended block station from 8:00 A. M. to 4:00 P. M. daily, except Sunday, and was a block limit station from 4:00 P. M. to 8:00 A. M.

With the advent of the 40-hour week, Yellow Springs, by order of the carrier, became an attended block station, Monday through Friday, from 8:00 A. M. to 4:00 P. M., and at all other times a block limit station. On May 6, 1950, the block limit station was discontinued on Saturday, and the block extended.

Claim is made for a day's pay for the senior extra telegrapher, or, if none is available, then one day's pay for each Saturday for the regular incumbent of the position at time and one-half.

The Saturday work, since September 1, 1949, has been performed by other operators at other stations.

There is an agreement recognized by the parties hereto which was entered into in 1939, and the same work is being performed on Saturday since that date as was performed before. If, therefore, the same work must be performed on the sixth day, it must be done by extra men, under the agreement, or the regular incumbent if extra men are not available.

The 1939 agreement between the parties is oral. This being true, and this oral agreement being recognized by both parties, it would follow that the carrier could not cut the hours of an attended block station and make a block limit station for additional hours of the day. If the carrier could do this, then it could, in substance, do away with an attended station. It further follows that, unless there is a change of working condition, the carrier could not abolish the station by extending the block.

The fact that the carrier extended the block after May 6, 1950, on each Saturday, was in violation of the agreement, since the same work on Saturdays is still there, and the extending of the block was an attempt to accomplish what the carrier had contracted it would not do.

The record reveals that the carrier made a settlement with the Yellow Springs operator on the basis of a call for each Saturday from September 1, 1949, to May 6, 1950. However, this settled only a part of the claim. This claim, it is true, was based on the Yellow Springs station being made a block limit station on Saturday.

The violation of the agreement continued, and the parties continued to handle this dispute on the property. We feel that a partial settlement of the monetary claim was not a settlement of the dispute. The claim should be sustained from May 6, 1950, on the basis of a call payment to the regular occupant of the position.

The carrier has called our attention to Awards 6001 and 6002. These two awards are not in point, for the reason that the claim now before us is controlled by an agreement between the parties which was not involved in Awards 6001 and 6002.

The 40-hour week agreement did not invalidate the 1939 agreement which the parties still recognize as being in effect.

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 agreement was violated.

AWARD

Claim sustained in accordance with the findings and opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.

DISSENT TO AWARD 6097, DOCKET TE-5889

The award of the majority in this docket is erroneous for the following reasons:

1. This Board has no jurisdiction nor power to make the said award:

(a) Section 3, First, (i) of the Railway Labor Act provides that disputes between an employee and the Carrier growing out of the interpretation or application of agreements "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." Unless a particular claim or dispute has been presented to the Carrier and handled with the Carrier through the various steps of the usual procedure in effect on that Carrier and failure to reach an adjustment of the dispute in this manner has occurred, this Board has no jurisdiction over such claim or dispute. No claim or dispute can be entertained by this Board without such prerequisite handling and once a claim has been presented to the Board, it may not be changed or amended thereafter.

(b) The claim submitted to this Board in this docket had to do with an alleged violation of a special agreement of 1939 prohibiting the closing of an attended block station and the creation in lieu thereof of a block limit station. That this was the claim presented to the Board is clear from the statement of claim appearing at the beginning of this award. This was the only claim submitted to the Carrier and "handled in the usual manner up to and including the chief operating officer of the carrier", as provided for by the Railway Labor Act. This was the only claim submitted to the Board or referred to in the ex parte submission of the Employees. Furthermore, the submission of the Employees in this case shows conclusively that this was the only claim that was presented to the Carrier. Thus, the Employees make the following statement in their submission:

"Under date of September 9, 1949, formal protest was made in a letter to Mr. W. H. Mapp, Superintendent, against the creation of this **Block Limit Station** on Saturday and claim was made for one day's pay for the oldest idle extra operator, or, if none available, then for the regular incumbent of the position at time and one-half rate, for each Saturday so operated, and case listed with the Super-

intendent for discussion at the meeting to be held on October 10, 1949. This claim was denied by the Superintendent's letter of September 22, 1949". (Emphasis added.)

This was the only claim of which the Carrier had notice and the only claim to which it directed its defense in its submission and its oral argument. The period covered by this alleged violation ran from September 1, 1949 to May 6, 1950 as shown by the record and the opinion of the majority. Hearing on this docket was held before the Board and thereafter the Carrier paid this claim in full as stated in the majority opinion. It was only after the documents referred to had been filed with this Board that the Organization contended for the first time that there was a violation of the **Schedule Agreement** (not the special agreement of 1939) in that the Carrier, subsequent to May 6, 1950, had abolished the block station on Saturday on the first trick and extended the block from Xenia to Springfield. This was an entirely new and different claim from that previously discussed with the Carrier and presented to the Board. That is the claim with which the award deals. The Carrier protested the injection of this new claim into the dispute in its "Sur-Rebuttal Brief". The majority admit that the claim filed with the Board and handled with the Carrier as required by the Railway Labor Act had to do only with the abolishment of a block station and the establishment in lieu thereof of a block limit station and had nothing to do with the right of the Carrier to abolish a block station and extend the block. Thus, the majority says:

"This claim, it is true, was based on the Yellow Springs Station being made a block limit station on Saturdays."

Nevertheless, the majority holds that there was a violation of the special agreement of 1939 following May 6, 1950 by virtue of the fact that the Carrier abolished the block station on Saturday and extended the block from Xenia to Springfield—an entirely different situation from that involved in the claim submitted to the Carrier and the Board. This Division had repeatedly held that under similar circumstances the Board has no jurisdiction to consider such a claim. As examples, see **Awards 5077, 4346, 1314**. To the same effect is **Award 757** of the Fourth Division.

2. The award for dates subsequent to May 6, 1950 purports to be based upon the special agreement of 1939, when, in fact, that agreement has no application to the situation in existence after May 6, 1950. Thus, after referring to the 1939 agreement the majority says:

"The fact that the carrier extended the block after May 6, 1950, on each Saturday, was in violation of the agreement, since the same work on Saturdays is still there, and the extending of the block was an attempt to accomplish what the carrier had contracted it would not do."

The agreement of 1939 has absolutely no application to the situation where a block station is abolished and the block is extended. The 1939 agreement, according to the description of that agreement supplied by the Organization itself in the record had only to do with the creation of a **block limit station in lieu of an existing open block station**. (Employees' Exhibits "A" to "J", inclusive.)

The Carrier discontinued the block limit station on the first trick on Saturdays effective May 6, 1950 and settled the claim from September 1, 1949 to May 6, 1950 and, consequently, the claim which was made by the Employees under the agreement of 1939 was disposed of.

No violation of any agreement between these parties occurred when the carrier abolished the block station at Yellow Springs on Saturday and extended the block from Xenia to Springfield. The record shows that no work of any kind was performed by anyone at Yellow Springs on the first

trick on Saturday following May 6, 1950. Such an arrangement is entirely proper under all agreements between the parties, and the General Chairman of the O.R.T. who negotiated both the Schedule Agreement and the special agreement of 1939 with the Carrier has so testified in arbitration proceedings as contained in the record, not refuted, in this case, that is:

"Q. Now on this Renova Division, you say that some of these block stations are opened up from time to time and then closed again but they do not become block limit station?

A. That is correct.

Q. What happens then?

A. Well, as we have been stating, they are just nothing. We pay no attention to that as being a block station. The block is extended.

Q. That is what I wanted to find out. Is the block then extended during those periods?

A. It is. The signals at those stations are disregarded in the extension of the block.

Q. May I ask you a question there, Mr. Huling?

A. Yes, sir.

Q. Do you consider that to be a violation or a deviation of the agreement to which you called attention a moment ago?

A. To close an attended block station and extend it to another point?

Q. Yes.

A. No, we do not consider that to be, **if nobody performs any service at this point.**

Q. I think we might elaborate that just a little, Mr. Huling. What is the difference, so far as you understand, when the management is concerned, between closing a block station and extending the block, on the one hand, or closing a block station and making it a block limit station on the other?

A. Well, closing a block station and abolishing the work and extending the block, no other employe performs any of our service **at that closed block station.** Closing a block station and establishing a block limit station, and then we find the trainmen performing our service daily, copying train orders, blocking trains, while in the first explanation of the block station being closed and the block extended, if it becomes necessary for trainmen to perform any of our service **at that location,** and we have an employe idle and available, he is paid a day's pay for the trainman performing our service.

Q. The difference between the two situations is that in the one instance the performance of the work of the telegrapher's craft is eliminated, and the other is performed by other employes; is that right?

A. That is right."

This Board also has held that the abolishment of a block station by this Carrier and the extension of the block is permissible under its agreements with Petitioner here—see Award 4053.

3. The Carrier's rights to close a block station at any time and transmit train orders by telephone to engine and train crews at any point other than the immediate location of the closed block station was affirmed by an Arbitration Award between these parties (N.M.B. Arbitration No. 153, cited in the record) effective February 15, 1952 and, consequently, in no possible event could the claim passed upon by the majority be valid for any period subsequent to February 15, 1952.

By this award the majority has not only assumed jurisdiction where none existed under the Railway Labor Act, but has attempted to impose a restrictive and costly obligation upon the Carrier where none existed. For the reasons stated above, we dissent.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp