

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 Company that:

The Carrier violated the Agreement between the parties when by General Order Number 206, dated July 10, 1952, it abolished third shift 10 PM to 6 AM—block operation Lambertville, New Jersey, and opened that Block Station 5 AM until 9 PM. Request is that each employe listed below in this claim, directly involved as the result of this violation, shall be compensated for any loss of time, change in hours of their regular assigned hours prior to date the General Order in question was issued.

That first trick Operator-Clerk, W. H. Wilmot be paid eight (8) hours for working the third trick assignment from 5 AM to 6 AM; one hour for being available but suspended from his regularly assigned tour 1 PM to 2 PM; time and one-half rate for any rest days worked as were assigned prior to date of change; and paid for those days he was subsequently required to observe as rest days, being available and not used; for second trick Operator Kayes, the same claim as that of Wilmot.

That third Trick Operator L. E. Young, who was compelled to exercise his seniority and go elsewhere to work, be compensated for being available and not used on his assigned hours at Lambertville; if he worked hours at other locations other than his assigned hours at Lambertville he be paid penalty time for working his assigned relief days at Lambertville; that he also be compensated for relief days at new position when being available and not used at Lambertville on those particular days; and that Young be compensated the usual allowance for car mileage at the agreed upon rate if his car was used as "result of violation."

Relief Operator P. Lewis to be compensated for working one hour, 5 AM to 6 AM, on third tour, and one hour available and not permitted to complete the assigned tour 9 PM to 10 PM; Penalty time for working changed relief days on former assigned relief days;

Car Mileage for use of car on new relief schedule, and straight time for not being permitted to work the assigned relief days on third at Lambertville under the proper schedule account available and not used.

The handling of Crossing gates and protections of highway crossing at Lambertville is the assigned duty of the Block Operator at that point, as shown in the Rate Schedule, and the operation of these gates by others is a violation of the Scope rule of the Agreement; for each violation an extra man shall be entitled to a day's pay or a regular man to a call.

EMPLOYEES' STATEMENT OF FACTS: Prior to the issuance of General Order No. 206, dated July 10, 1952, effective at 9 PM, Sunday, July 20, 1952, the force at Lambertville consisted of the following:

1 Agent

1 Operator Clerk 6 AM to 2 PM*

1 Operator Clerk 2 PM to 10 PM*

1 Block Operator 10 PM to 6 AM*

*Protects highway crossings

General Order No. 206, effective July 20, 1952, reads as follows:

Effective 9 PM Sunday, July 20, 1952

Applies in Zone F

(a) Belvidere-Delaware Branch

Frenchtown

Block Station in service 5 AM to 9 PM daily instead of continuously.

Block-Limit Stations, HD, MD and RK controlled by MG 9 PM to 5 AM daily when Frenchtown is closed.

Page 8, Stations and Block-Limit Stations controlled as follows:

Time Table No. 2 changed.

(b) Belvidere-Delaware Branch.

Lambertville.

Block Station in service 5 AM to 9 PM daily instead of continuously.

Page 8, Time Table No. 2 changed.

On July 20, 1952, effective date of General Order No. 206, the force at Lambertville and tours of duty arbitrarily changed to the following:

1 Agent.

1 Operator-Clerk 5 AM to 1 PM*

1 Operator-Clerk 1 PM to 9 PM*

*Starting Time shown is for the period last Sunday in April to last Sunday in September. From last Sunday in September until last Sunday following April hours became one hour late. The change in starting time due to Daylight Saving Time.

to the said Agreement 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 Agreement between the parties to it. To grant the claims of the Employees 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 the provisions of the applicable Agreement do not support the Employees' claim for the compensation sought and such claim must fall.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: A careful reading of the record in this case indicates clearly that the Organization, by its statements, has abandoned all of the claim filed with this Board except the final paragraph and has substituted therefor an open compromise offer.

We will note Carrier's statement that

"* * * the question to be decided by your Honorable Board is whether an available regular man is entitled to a 'call', i.e., three hours' pay at the straight time rate of pay, or eight hours' pay at the straight time rate of pay on each day that a trainman was required to protect the movement of his train over the highway crossing at Lambertville during the hours that the block station was not open during the period July 20, 1952, to February 20, 1954, and an extra Block Operator was not available,"

and hold such available regular man was on those days, entitled to a "call."

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

That the Agreement was not violated to the extent charged.

AWARD

Claim sustained only to the extent that the regular man is entitled to a call on each day that a trainman was required to protect the movement of his train over the highway crossing at Lambertville during the hours the block station was not open between July 20, 1952 and February 20, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.