

Award No. 8421
Docket No. TE-8072

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: NORTHERN DIVISION—Claim of Block Operator J. E. Price for payment of 8 hours at \$1.922 per hour on account of helper engine 8436, Engineman Wylie, crossing over at Sizerville and throwing switches for the crossover movement on February 23, 1954.

EMPLOYES' STATEMENT OF FACT: Sizerville, Pa., Block Office was shown in the May 16, 1943 Agreement as a three trick Block Operator Office with symbol indicating that the rate of pay as shown in the Rate Schedule includes compensation for handling ground switches, viz:

Sizerville—1st, 2nd and 3rd trick—Block Operator * \$.8675
*Includes compensation for handling ground switches and pump.

Sizerville Block Office was closed on all tricks on August 18, 1947 and all the work of the position was supposedly abolished, including the handling of ground switches, as well as all other Block Operator's duties, such as copying train orders, blocking trains, OSing (reporting) trains, displaying signals and other duties incidental to block Operator positions.

On February 23, 1954 helper engine 8436 assisted train BF4 southbound from Port Allegany, Pa. to Sizerville, where the helper engine cut off and the crew of the helper obtained permission on the telephone located at Sizerville to crossover from the southbound main track to the northbound main track in order to proceed north to Port Allegany. Since the crew of engine 8436 performed the work that the block operators at Sizerville formerly performed, it constituted a violation of the Scope Rule of the Telegrapher's Agreement. J. E. Price, an extra block operator, was available with a prior right to perform this work, and submitted time card for 8 hours pay, which was denied.

The claim was then progressed to the highest officers of the Carrier in accordance with the Agreement and denied. Thus, having exhausted all means to settle the claim on the property, it is now submitted to your Honorable Board for determination.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim before us in this case is "for payment of 8 hours at \$1.922 per hour on account of helper engine 8436, Engineman Wylie, crossing over at Sizerville and throwing switches for the crossover movement on February 23, 1954."

The Joint Statement of Agreed-Upon-Facts notes the helper crew:

"***cut off at Sizerville, crossed over to the northward main, and proceeded north to make another assist south. The fireman of the helper crew threw the switches at Sizerville to crossover from the southward main to the northward main."

The complained of incident occurred six years, six months and five days after Carrier had closed the Sizerville Block office on all tricks.

The Position of Employees, as contained in the Joint Submission states that the

"Sizerville Block Station is a block station closed since May 1, 1938. It was carried in the May 16, 1943 Agreement with a symbol indicating operators were in charge of handling ground switches and pump at that point. This office was closed August 18, 1947 and all work was abolished**** when the office was closed. When the September 1, 1949 Agreement was made, Sizerville was left out of the Agreement on the basis that no office or work existed at that point. Subsequent to that Agreement we discovered that train crews were being authorized to handle the ground switches, left in service, but which were not being used to our knowledge.

"On finding that the Company authorized train crews to reopen the office at Sizerville,"

employees' position continues,

"* * * and perform the work formerly handled by operators at that point, we filed claim on the basis that the office had been recreated, but the work had not been returned to employees who had contracted to perform it, but had been transferred to employees not under the coverage of the Agreement.

"The work being performed not only includes the handling of the crossover switches, but also includes securing permission by telephone at Sizerville to make crossover movement and occupy main tracks. Work such as was always performed by the operator at Sizerville when this office was open, but which was supposed to have been abolished when it was closed. When this office was open this work was the exclusive property of the Telegraphers and performed by them."

Carrier's position, as contained in the Joint Submission, is that

"The crossover switch at Sizerville is used primarily by helper crews in order to cross over from one main track to another when

assisting trains northward or southward. The throwing of the switch in such instances is for the movement of the helper crews and is a proper part of their duties.

"The throwing of ground switches is not exclusively operator's work, particularly since they get extra compensation for handling them and since the rate and the notation have been omitted from the Rate Schedule in the back of the O.R.T. Agreement effective Sept. 1, 1949."

In its oral argument presented to this Board, Carrier observes

"* * * that the only issue involved in the subject filed with your Honorable Board concerns the question of an engine crew member handling a ground switch for a crossover movement. It is noted that there is no mention made there of securing verbal permission, blocking trains or copying train orders. * * *

"However, it is now apparent that the Employees have expanded their original complaint to include 'securing permission by telephone located at Sizerville to make the crossover movement and occupy the main tracks and permission to proceed from that point' in addition to the handling of ground switches at Sizerville."

Argument offered in behalf of Organization states the "Position of Employees," as contained in the Joint Submission (hereinabove quoted)

"* * * sets forth the contentions made by the Employees from the very beginning of the controversy. Among other things it disproves the Carrier's contention, at page 43, that it thought the only question at issue was operation of a ground switch."

Also that:

"All of the operating rules cited by the General Chairman must be observed when any movement through a crossover, into, or out of a block is made; and all of them require communication by telephone with other locations. The movement of the locomotive through the crossover at Sizerville could not have been safely made without compliance with all of those rules; it could not have been made at all without compliance with some of them. It follows that the telephone was used, as contended by both the Local Chairman at the initial conference, and the General Chairman at subsequent levels of handling."

However, the fact remains quite clear that the claim here before us for decision is

"for payment of 8 hours at \$1.922 per hour on account of helper engine 8436, Engineman Wylie, crossing over by Sizerville and throwing switches for the crossover movement on February 23, 1954."

It is equally clear that the Joint Statement of agreed-upon-facts confined itself to the throwing of switches.

We will consider this claim to be what its language indicates: an allegation that the agreement was violated when an engine crew member threw the switch or switches for the crossover of helper engine 8436 on February 23, 1954. We have no authority to do otherwise.

One of the many Awards cited by or in behalf of Organization is Award 4289 (Rader), a sustaining Award. It is distinguished from the facts here present because the claim there sustained was that

"* * * when 'RA' Block Station was closed, * * * all the work of the position was not abolished in fact, but remaining work was turned over to employees not under the coverage of the Telegraphers' Agreement; * * * " (Emphasis added.)

Employees' position here is that Sizerville Block Station

"* * * was closed August 18, 1947 and all work was abolished, including the handling of ground switches. * * * When the September 1, 1949 Agreement was made, Sizerville was left out of the Agreement on the basis that no office or work existed at that point. * * * "

The claim here arises as a result of the crossover movement of February 23, 1954.

Rule 4-S-1 of the applicable agreement provides:

"(a) An employe shall not be required to throw ground switches, except in cases of emergency, unless the regular duties of the position involved include the performance of such service.

"(b) When the duty of throwing ground switches is regularly assigned to a position, the rate of pay of such position shall be adjusted by agreement, in writing, between the duly accredited representative and the proper officer of the Company."

An appraisal of such Rule indicates that the contracting parties did not consider the throwing of ground switches as part of the normal duties of a telegrapher; otherwise there would have been no necessity for the inclusion of a special rule providing that telegraphers

"shall not be required to throw ground switches"

except under the circumstances therein described.

It is, however, a Rule which is controlling here because it is abundant proof that the throwing of ground switches is not work which belongs to Telegraphers to the exclusion of all other classes or crafts. There have been many Awards of this Division which have denied claims for non-exclusive work, including Awards 7031 and 7784.

Accordingly we will hold that the throwing of a ground switch at Sizerville crossing by an engine crewman of helper engine 8436 on February 23, 1954 was not violative of the applicable agreement.

A denial Award will be made.

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.

AWARD

Claim denied.

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.