

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" violated the Scope and Definitions of Part II of the Schedule Agreement between the parties, effective June 1, 1960, when from September 1, 1960 until September 11, 1960, the Carrier permitted and/or required duties of Movement Directors to be performed by employees and/or supervisory officers not within the Scope of the Agreement.

(b) Carrier shall now compensate Claimant H. B. Johnson, the senior available Extra Movement Director, one day's pay at Movement Director rate for the following dates: September 1, 2, 3, 6, 7, 8, 9, and 10th, 1960, all of which dates Claimant Johnson was available and could have been used at pro rata rate if the Schedule Agreement had been properly applied. (S.D. 46)

EMPLOYEES' STATEMENT OF FACTS: An Agreement on rules governing compensation, hours of service and working conditions, dated June 1, 1960, between the parties to this dispute, and applicable to the claim identified herein, was in effect at the time this dispute arose. A copy of that Agreement is on file with your Honorable Board and is, by this reference, made a part of this Submission as though fully incorporated herein.

The Scope and Definitions (Page 28) of Part II of the Agreement which are material here provide:

"SCOPE

"The provisions set forth in Part II of this Agreement shall constitute an Agreement between the Pennsylvania Railroad Company and its Movement Directors represented by the American Train Dispatchers Association, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

"(b) An extra employe notified or called to perform work, and reporting for such work, shall be paid a minimum of three (3) hours at the pro rata rate of the assignment for which called."

Therefore, even if it were to be considered that Claimant was entitled to be called to perform the work involved, he would be entitled to no more than three pro rata hours pay therefore.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required to Give Effect to 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, 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 claim 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 any such action.

CONCLUSION

It has been shown that no work is being performed by employees other than Movement Directors to which Movement Directors have established an exclusive right; that the Scope and Definitions of the Rules Agreement were not violated; and, that the Claimant is not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The record establishes that the work in dispute has been customarily and traditionally performed by the Movement Director. The record also supports the contention of the Employees that Carrier's attack on paragraph (b) of the claim was not made on the property. Our policy or rule in such a situation is well settled.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1963.