

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington & Quincy Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to increase the rates of the three positions (Agent—Operator—Leverman) at East Winona, Wisconsin, when, on July 8, 1958, it added the handling of Centralized traffic control devices to the duties of these positions resulting in additional duties and responsibilities.

2. Carrier shall, effective July 8, 1958, increase the rates of the three positions at East Winona, Wisconsin in the amount of 25¢ per hour commensurate with the increased duties and responsibilities.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

East Winona, Wisconsin is a station on the La Crosse Division of this Carrier's lines. The Green Bay & Western Railway crosses the CB&Q at this point. A branch main line of the CB&Q known as the Winona Branch connects with the main line at East Winona. There are three seven-day positions at East Winona. Agent—Operator—Leverman, Second Operator-Leverman and Third Operator-Leverman providing twenty-four hour service. Prior to July 8, 1958 the duties of the operators at East Winona consisted of handling train orders, messages and other communication work, the operation of a 16 lever manual interlocker controlling the movement of CB&Q trains on the La Crosse Division main tracks and the Winona Branch main track along with the CMSTP&P trains which operate over the CB&Q tracks from Trevino Wisconsin to Winona. The CMSTP&P trains are shunted to the Winona Branch at East Winona. The Winona Branch (CB&Q) trains do considerable switching within the interlocking while making up the train. The GB&W trains also pick up and set out at East Winona necessitating operating of the interlocking switches and signals. A large part of the communication work is relay of messages etc. between Winona and La Crosse.

Commencing with July 8, 1958 a CTC (Centralized Traffic Control) device, or machine, was placed in operation at East Winona. This CTC machine operates three switches and ten signals controlling the movement of trains

Third Division Award 3194, (BRC v AT&SF) Referee Edw. F. Carter

"This being true, the remedy, if one is required, is by negotiation because an Award of this Board eliminating the differentials by granting the maximum rate to all would be nothing more or less than the fixing of rates of pay without contractual support. This we are not empowered to do. Award 2218. The following Awards of this Division sustain the position we have herein assumed. Awards 3002, 2281 and 2137. No basis for an affirmative award exists."

Third Division Award 2983, (BRSA v AT&SF) Referee Mart J. O'Malley

"This Board cannot create new rates for the employees coming under the contract of the Signalmen, nor can it make an award on a subject not processed as provided under the law."

Third Division Award 2202, (ORT v CRI&P) Referee H. Nathan Swaim

"If this statement were true, it still would give this Division no authority to sustain the claim. It is not the business of this Division to raise rates of pay, even though of the opinion that if the matter had been considered by the parties around the table and the raise would have been agreed to. For us to hold otherwise would be to place the Division in the position of making agreements for the parties, a matter clearly outside of our jurisdiction."

Third Division Award 5911, (BRC v REX) Referee David R. Douglass

"To establish new rates for these claimants is a matter for negotiation, and not a prerogative of this Board."

Third Division Award 6271

"To sustain this claim would result in either the writing of a new rule or the amending of an existing rule. Such is beyond the power of this Tribunal."

Third Division Award 6274

"The end sought here is proper subject matter for collective bargaining. It cannot be achieved by award of this Division."

See also Third Division Awards 7577 and 8538.

To sustain the instant claim would result in either writing a new rule or in amending existing Rule 2 paragraphs (d) and (e), which the Board recognizes is beyond its power.

In the light of the clear provisions of Rule 2 (d) and (e), requiring agreement between the parties before change is made in rates of pay, the Board has no alternative but to dismiss the instant claim for lack of jurisdiction.

OPINION OF BOARD: The instant claim involves an interpretation of Rule 2 (d) of the agreement. The rule is as follows:

"(d) When the handling of remote or centralized traffic control device is added to the duties of a regularly assigned position, if addi-

tional duties and responsibilities result therefrom, the hourly rate of the position shall by agreement be increased commensurate with such increased duties and responsibilities."

The Organization argues that this rule clearly requires an increase in the hourly rates of the positions in question, if the employees show that additional duties and responsibilities have resulted from the addition of the remote control or centralized traffic control devices. They propose that such increase be set at 25¢ per hour.

The Carrier argues that this claim amounts to a request for this Board to fix rates of pay. They urge that we have no authority to perform such function. They state that the rule was so constructed as to make it clear that agreement of the parties is a condition precedent to a change in a rate, under the provisions of this rule.

The drafters of the agreement are said to have accomplished this result by separating the compound verb, "shall be increased," by the insertion of the adverbial phrase, "by agreement."

It seems to us that the critical language to be interpreted is, "shall by agreement be increased." We are of the opinion that by using this language, it was intended that disputes of this nature would be settled by agreement of the parties to the contract. The construction used, takes this matter out of the hands of this Board.

It is basic that this Board does not have authority to fix rates of pay.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.