

Award No. 13839

Docket No. TE-13087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ERIE-LACKAWANNA RAILROAD (ERIE)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad (Erie), that:

1. The Carrier violates the terms of an Agreement between the parties hereto when on April 9, 1960, it declared the position of Block Operator-Clerk at Pompton Plains, New Jersey, abolished without in fact abolishing the work thereof.

2. The Carrier violates the terms of an Agreement between the parties hereto when on April 9, 1960, it declared abolished the overtime work on the Agent-Block Operator's position at Wanaque-Midvale without in fact abolishing the overtime work.

3. The Carrier shall, because of the violation set out in paragraph 1 hereof, compensate Operator A. DeVito, commencing April 11, 1960, and each subsequent date thereafter so long as the violation continues, the difference between the compensation received and what he would have earned had he remained on his position at Pompton Plains, plus expenses incurred by reason of Carrier's violative act.

4. The Carrier shall, because of the violation set out in paragraph 2 hereof, compensate the incumbent of the Agent-Block Operator's position at Wanaque-Midvale (at present C. Bauman) the equivalent in overtime, both before and after his tour of duty commencing April 11, 1960, and for each date thereafter that employes not covered by the parties' Agreement perform blocking operations formerly performed by the occupant of the Agent-Block Operator's position.

5. The Carrier shall, in addition to the foregoing, compensate J. Cadmus, Jr., for wages lost and expenses incurred due to being improperly displaced from the Agency at North Newark by A. DeVito, and

6. Compensate the former Agent at Suffern, N. Y. (who was displaced by J. Cadmus) and all other employes who were adversely

Petitioner that it was not well informed that Carrier was making application to reduce passenger service and consistent therewith assigned hours at Pompton Plains and Wanaque-Midvale. If there is merit to Petitioner's argument that the involved stations should have been kept open during the involved hours, then was the time for Petitioner to register complaint—not now. This is without question in light of the fact that Petitioner's argument here is most emphatically not supported by any rule of agreement or otherwise. Carrier knows of no protest having been made by Petitioner to the Commission. Petitioner's position here falls four square within the old maxim that "one who is silent when he ought to speak will not be heard to speak when he ought to be silent."

The record firmly establishes that conductors departing and arriving Wanaque-Midvale when no operator has been on duty have historically contacted either the first or last open station for block purposes. The work now being performed by the operator at Great Notch is no different than that which has always been performed, except that the information is now received direct from the conductor on arrival at Wanaque-Midvale. Work during these hours at Wanaque-Midvale and Pompton Plains was most emphatically abolished, and no one other than employees covered by the involved agreement is performing operator's work. This cannot be questioned, as established by the record. The procedure followed here has been shown to be the same Petitioner has always recognized as proper and consistent with the rules agreement. In 1946, when the third trick at Great Notch was abolished and similar arrangements made, no protest was received from Petitioner. In 1953, Petitioner withdrew and closed like claims. In 1957, during negotiations of the current agreement, the involved procedure was fully discussed and recognized as proper by Organization representatives. The same procedure is followed on the Caldwell Branch without protest. And, when Carrier reduced the hours at Little Falls and abolished the position at Montclair Heights, no protest was made by Petitioner. In light of all the facts as they actually are, and as they are known to be by Petitioner, Carrier reiterates that it does not understand how Petitioner can possibly register complaint in this dispute.

Based upon the facts and authorities cited, Carrier submits that the instant claim is very definitely without merit, and should be denied in its entirety.

OPINION OF BOARD: The claim here is based upon an alleged violation of the Scope Rule of the Telegraphers' Agreement.

The basic contention of the Petitioner is that the violation occurred when on or about April 9, 1960, and continuing thereafter, conductors of west bound passenger trains upon arrival at Wanaque-Midvale in block territory on Carrier's Greenwood Lake Branch reported information by telephone to the Block Operator at Great Notch, instead of to the Block Operator at Pompton Plains or West Arlington, as had been the practice prior to the aforesaid date.

The record shows that effective April 9, 1960, the Carrier made some operational changes on its Greenwood Lake Branch due to a reduction in passenger service in that territory. Among other things, it reduced the number of hours during which certain block offices were open. Thus, Montclair Heights was eliminated as a block office; Little Falls closed at 2:45 P.M. instead of 7:30 P.M.; Pompton Plains closed at 3:00 P.M. instead of 10:00 P.M., eliminating one Block Operator position; Wanaque-Midvale

closed at 3:45 P. M. instead of 4:45 P. M., eliminating one hour of assigned overtime.

The record is devoid of any evidence supporting Petitioner's allegation that train service employees performed any service at Pompton Plains which came within the scope of the Telegraphers' Agreement. The facts are that prior to April 9, 1960, conductors of westward trains arriving at Wanaque-Midvale telephoned information to the Block Operator at Pompton Plains. After that date they reported by telephone to the Block Operator at Great Notch. Such use of the telephone by conductors and trainmen for the purpose of clearing their trains is a necessary part of the performance of their regular duties, and has long been held not violative of the protected rights of Telegraphers. See Award 700; Cf. Awards 10954, 10918, 9343, 8208, 7076, 5229.

In view of the foregoing, the claim will be denied.

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 17th day of September 1965.