Award No. 14094
Docket No. TE-14103

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly 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

> On August 1, 1960, the Operators at New Lexington absorbed the work and territory previously handled by the Train Dispatchers at Zanesville, Ohio.
>
> Under Regulation 8-A-1 (c), when the duties or responsibilities of an established position are substantially changed, the rate of pay and/or condition of employment may be changed by the proper office of the Company and the duly accredited representative of employes.
>
> I, therefore, request that as of August 1, 1960, the rate of pay for the employes working at New Lexington, Ohio, be increased by $.15 (fifteen cents) per hour.

EMPLOYES' STATEMENT OF FACTS: New Lexington, Ohio, is situated on Carrier's Zanesville Branch (of its Buckeye Region) which extends 148 miles southwestwardly from Trinway, Ohio (136 miles west of Pittsburgh, Pennsylvania), to Morrow, Ohio, approximately 40 miles north of Cincinnati, Ohio. At Morrow the Zanesville Branch joins the Carrier's Xenia to Cincinnati line. A rough sketch of the related points is attached hereto as ORT Exhibit A.

The Time Table listing of the stations between Trinway and New Lexington prior to August 1, 1960, was as follows:

ZANESVILLE BRANCH

Zanesville Secondary Track

Trinway	MP	0.3	
RY		0.8	(Block Limit Station)
Dresden		2.1	

OPINION OF BOARD: There is sufficient evidence in the record to conclude that the duties and responsibilities of the Block Operators' positions at New Lexington were "substantially changed" as required in Regulation 8-A-1 (c) of the Agreement. Referring to the factual question of whether or not there has been a substantial change in the duties and responsibilities of the Block Operators' positions, Carrier said that "there is actually no such dispute in the instant case." In fact, Carrier stated that:

> "So far as the Carrier is able to determine the basis of the claim, the question to be decided by your Honorable Board is whether in the circumstances herein present, the action taken on August 1, 1960, with respect to the Block Operators at New Lexington constituted a substantial change in their duties or responsibilities thereby requiring, in accordance with Regulation 8-A-1(c) of the applicable Agreement, negotiations with the Organization with a view to considering a possible adjustment in the rates of pay of Block Operators at New Lexington, Ohio."

Regulation 8-A-1(c) says:

> "When the duties or responsibilities of an established Group 2 position are substantially changed, the rate of pay and/or condition of employment may be changed for such position on the basis of like positions on the same Region as agreed to, in writing, between the duly accredited representative and the proper officer of the Company."

Carrier contends that the work at this location has diminished over the years, which justifies a reduction rather than an increase in the rate of pay. The Carrier also says "that rates of pay now being paid to the block operators at this location were established when considerably more traffic was being handled than is now being moved. . . ." There was more traffic during the ten-day period between March 21 to 31, 1932 than in April, 1961.

On November 8, 1962, Carrier wrote to the Employes' General Chairman, in part, as follows:

> "In the letter referred to above, you advised that the Employes would welcome a joint study at New Lexington to determine the added duties and responsibilities placed upon the Operators subsequent to August 1, 1960.
>
> We have no objections to entering into such a study, provided that the study also includes a comparison of the work presently performed by the Operators at New Lexington with the work performed by them in 1932, when the rates of pay for the position in question were last established.
>
> If you concur with the foregoing and will so advise, arrangements will be made accordingly."

Employes replied on November 15, 1962, in part, as follows:

> "This dispute does not involve rate of pay established 30 years ago. This claim arose on August 1, 1960 and the change in duties and responsibilities occurred as of that date, and Regulation 8-A-1(c) governs. We are willing to enter into a joint study, as outlined in my letter of June 28, 1962. . . ."

There is no probative evidence in the record to show the basis upon which the 1932 rates were established. There was no job evaluation. The mere fact that traffic may or may not have decreased from 1932 until 1960 is not conclusive, nor is it a material criteria to set rates under Regulation 8-A-1(c). That Rule says that the rate of pay "may be changed for such position on the basis of like positions on the same Region as agreed to, in writing. . . ." It contemplates a comparison of like positions in the same Region at the time when the duties and responsibilities were changed, and not a comparison of rates that existed thirty years prior thereto. No reasonable rule of contract interpretation can accept Carrier's position. Several Agreements have been negotiated by the parties since 1932.

Neither party has shown the rates of pay for comparable positions in the same Region. In the absence of such a showing, this Board has no authority to fix rates of pay. For this reason, this Board can only return the claim to the parties and direct them to negotiate rates on the basis set out in Regulation 8-A-1(c).

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 Employes involved in this dispute are respectively Carrier and Employes 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 parties have not negotiated rates of pay as provided in the Agreement.

AWARD

The claim is remanded to the parties, and they are directed to negotiate rates of pay for the positions in question based upon like positions on the same Region which existed immediately prior and subsequent to August 1, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14094,
DOCKET TE-14103 (Referee Dolnick)

The Majority erroneously decided that:

"* * * The mere fact that traffic may or may not have decreased from 1932 until 1960 is not conclusive, nor is it a material criteria to set rates under Regulation 8-A-1(c). * * *"

Regulation 8-A-1(c) does not limit a change in rate of pay only to those circumstances where an increase might be justified. Neither does it provide that the substantial change in duties or responsibilities must occur overnight. A change in duties is very often imperceptible, and yet, over a period of time, very substantial. Once this substantial change has been demonstrated — at it was in this case, then it is entitled to be given some weight in determining whether there was — in fact — a sufficient change in the duties — to warrant a change in the rate. The Majority would scarely argue with the proposition that a rate of pay should have some relationship with the duties performed, yet they refuse to apply this logic to an application of Regulation 8-A-1(c). In this respect, they erred.

In the concluding paragraph, the Majority asserted that:

> "Neither party has shown the rates of pay for comparable positions in the same Region. In the absence of such a showing, this Board has no authority to fix rates of pay. * * *"

Then the Carrier was directed to negotiate rates. In **Award 12072**, with this **same Referee** and same facts, the claim was **DISMISSED** with this statement:

> "Petitioner filed the claim for specific amounts of hourly wage increases for each of the positions. At no time, on the property, did Petitioner present evidence comparing the compensation for the claimed positions with rates paid for similar positions as required in Rule 21. Petitioner first presented such evidence in the Ex Parte Submission. This we may not now consider. Negotiations on comparability of rates as required in Rule 21 should have been done on the property. It cannot be considered after the claim is filed with the Board.
>
> We held in Award 11440 that the burden of proving the similarity of positions is upon Petitioner. This, Petitioner has failed to do on the property. On the basis of the record, Petitioner failed to negotiate for an adjustment in rates within the requirements of Rule 21."

Award 11527, same Referee, held:

> "There is also nothing in the record to show like positions in the same Region which carried a rate higher than the rate paid for the positions of T&S Inspectors at Cleveland and New Castle."

The Petitioner had no less a burden in this case which they failed to assume, and the claim should have been dismissed.

For the reasons set forth above, and others, we dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. N. Naylor
W. M. Roberts