



Award No. 15569

Docket No. TE-13730

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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, that:

1. The work performed at Danville and Mt. Vernon Block Stations and Block Limit Stations BH, GA, BG and CQ, formerly controlled by these Block Stations when open, shall be restored to these locations.

2. The Carrier (Pennsylvania Railroad) shall compensate Block Operators F. A. Hicks, R. E. Dalrymple, T. E. Hampton, A. D. Tucker and any regularly assigned or extra block operator available, eight (8) hours' pay at pro rata rate retroactive sixty (60) days from the date of this claim, and for each subsequent date that this violation continues.

EMPLOYEES' STATEMENT OF FACTS: Attached to this submission as Employees' Exhibit A is a rough sketch of the districts of the Pennsylvania Railroad involved in this claim which dwells principally with the Lake Seniority District and the Eastern Seniority District. The claim involves the transfer of work from employees of one seniority district to those of another. The claim was lodged by the following letter and continued thereafter pursuant to the correspondence reproduced below:

Barberton, Ohio
August 16, 1960

Mr. F. C. Hill
Asst. Suprv. Operator
Columbus, Ohio

Dear Sir:

Buckeye Region General Orders No. 609, Zone A, effective August 14, 1959, and No. 706, effective February 18, 1960, by their dictum, transferred the duties, services and operational control from Lake

the Superintendent, Personnel, Buckeye Region. Following discussion on October 14, 1960, the claim was denied by him on November 11, 1960.

By letter dated December 31, 1960, the District Chairman rejected the decision of the Superintendent, Personnel, Buckeye Region, and requested that a Joint Submission be prepared. A copy of the completed Joint Submission dated July 21, 1961, is attached hereto as Carrier's Exhibit A.

Following discussion of this matter by the Manager, Labor Relations and the General Chairman on September 7, 1961, the claim was denied by the Manager, Labor Relations in his letter dated October 25, 1961, on the basis that no violation of the Rules Agreement occurred as a result of the re-assignment of control of block limit stations as previously outlined; although he did proffer the suggestion that discussion of the advisability of permitting Lake District employees to participate on certain assignments on the Eastern District at Orrville would not be refused by his office. The Organization, however, on November 6, 1961, repudiated the request which had been previously been made by the District Chairman for such a pro rating of the assignments at Orrville and subsequently presented the case to your Honorable Board.

Therefore, it appears that there are three questions to be decided by your Honorable Board, namely: (1) whether or not the matter on the property has been properly handled as required in Article V of the August 21, 1954 Agreement, (2) whether or not the assignment of control of block limit stations on one seniority district to a Block Operator at a Regional and District junction point of that seniority district with another seniority district does, in fact, violate Regulations 1-A-1, 1-B-1 (a) and (b), 2-F-1, 2-M-1 and 5-G-1 (a) and (3) whether or not Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Inasmuch as the procedural question presented in Carrier's submission was not raised on the property, it will be given no consideration here.

Claimants herein were regularly assigned Block Operators assigned to the former Lake Division Seniority District of the Carrier. The Claim presented involves the transfer of work from the employees of one seniority district to another; it involves the unilateral transfer of work from the Block Operators at Danville and Mt. Vernon on the Lake Seniority District to employees at Orrville Block Station on the Eastern Seniority District of Carrier where the block operators at Orrville possessed seniority only on the Eastern District and had no seniority on the Lake District.

It is the contention of the Carrier that there is nothing in the controlling Agreement which forbids Carrier from transferring the work involved from one seniority district to another.

Claimant, to the contrary, contends that seniority is a valuable property right, and that work assigned to employees of one seniority district cannot unilaterally, without negotiation, be assigned to employees having seniority in another seniority district.

As was said in Award 4987 (Boyd):

"It has long been settled that seniority is a valuable property right. In order for seniority to be of value, it must be that the parties intended employees in a seniority district to have prior right to perform all work falling within the classifications covered by a seniority district. Any other construction of seniority provisions of a contract would admit of the possibility that work assigned under the contract of one seniority district could be transferred to others so that seniority as a prior right to work would be nullified. This Division has held in a number of awards that work of one seniority district may not be assigned to employees in another."

That work may not be transferred from one seniority district to another has been held quite consistently in a number of awards of this Board. See Award 4667 (Connell), Award 5091 (Coffey), Award 9419 (Bernstein), Award 9193 (Weston), Award 5375 (Donaldson), Award 5437 (Parker), Awards 4210 and 4698 (Robertson), Awards 6451 and 6453 (Whiting), Award 13215 (Coburn) and many others.

This was a continuing violation, but no complaint was made by Petitioner until August 16, 1960; consequently, the claim is retroactive sixty days from the date of the presentation of the claim. It is Carrier's position that the time covered by the claim should be limited to November 6, 1961, because on that date Carrier offered to discuss the proposition of an adjustment of the claim, which the General Chairman refused to do unless the losses incurred by the Claimants were paid up to that time. Carrier contends that had the effect of tolling the running of the Claim to November 6, 1961. Petitioner contends that the offer to negotiate should have been made before the change was effected.

Any recovery allowed should be limited to the named Claimants, as after the lapse of time involved, it would be nigh to impossible to discern who the unnamed Claimants were who were then available.

No argument having been presented in support of paragraph 1 of the claim, it will be disallowed.

The recovery of damages, under all the circumstances herein, is limited to any monetary loss, if any, which occurred to any of the named Claimants as a result of the transfer of work to Orrville, making the Claimants whole from any loss sustained. The award of damages is to be limited to the actual loss incurred by each of these Claimants.

See Award 3964 (Fox).

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 has been violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1967.