

Award No. 15940
Docket No. TE-14659

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, 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, Southwestern Region, District No. 2, of the Pennsylvania Railroad, that the Pennsylvania Railroad violated the scope of the Agreement at Altamont, Illinois on February 20 and 21, 1962 when the Carrier required the Pennsylvania Railroad agent at Altamont to open the freight station at this location and permit and allow B&O train service employes, employes not covered by the Telegraphers' Agreement, to report B&O passenger and freight trains "off" and "on" the Pennsylvania Railroad main lines at this location, copy B&O train orders from the B&O dispatcher via Flora, Illinois from communication facilities within the Altamont freight station.

The joint block station and train order office for the Pennsylvania and Baltimore and Ohio Railroads was abolished effective 2:00 P.M., April 2, 1958. However, on February 20 and 21, 1962, the Pennsylvania Railroad allowed the Baltimore and Ohio Railroad to run their trains on the Pennsylvania Railroad's main lines, eastbound from East St. Louis, Illinois to Altamont, Illinois, westbound from Altamont, Illinois to East St. Louis, Illinois, which made it necessary to open a temporary block station and train order office at Altamont, Illinois.

Therefore, the work performed by the Baltimore and Ohio train service employes not covered by the Telegraphers' Agreement at this temporary block office and train order office at Altamont is work that formerly accrued to employes of the telegraph department. Prior to April, 1958, employes from the telegraph department did copy and deliver orders to Baltimore and Ohio trains and reported their arrival and departure in the prescribed manner. Telegraph department employes should have been called to perform the required service at this temporary station.

It can be established that no qualified extra Group 2 employes were available; however, the following regular incumbents of Group 2 positions were qualified and available and observing their rest days on February 20, 21, 1962 and should have been called to perform the required service and are entitled

to be paid for eight (8) hours' pay at the time and one-half rate of their positions for not having been called:

February 20, 1962 - E. A. Beccue, 2nd trick Willows Tower, East St. Louis, Illinois, rest days Monday and Tuesday. This employe resides at Altamont, Illinois.

February 20, 1962 - C. B. Gentry, 2nd trick Smithboro, Illinois, rest days Monday and Tuesday.

February 21, 1962 - L. L. Deverick, 3rd trick, Smithboro, Illinois, rest days Tuesday and Wednesday.

EMPLOYEES' STATEMENT OF FACTS: Carrier's main line of its Southwestern Region extends westward from Indianapolis, Indiana, to East St. Louis, Illinois, a distance of 235.8 miles. Altamont, Illinois is located 151.5 miles west of Indianapolis and 84.3 miles east of East St. Louis.

The Baltimore and Ohio Railroad's main line of its St. Louis Division extends westward from Cincinnati, Ohio to East St. Louis, a distance of 335 miles. Flora, Illinois is 242.5 miles west of Cincinnati and 90 miles east of East St. Louis.

The Baltimore and Ohio's Springfield Sub-Division extends southward from Beardstown, Illinois to Shawneetown, Illinois. It intersects the Pennsylvania main line at Altamont, and 32.6 miles further south it crosses the Baltimore and Ohio's main line at Flora, Illinois.

Prior to April 1, 1958, the Pennsylvania maintained a three-shift, around-the-clock Block Office at Altamont, manned by Block Operators-Towermen. These employes performed the work of operating levers controlling signals and switches, blocking and reporting trains, and handling train orders for both Pennsylvania and Baltimore and Ohio trains. The B&O had no block operators or telegraphers at Altamont. The Pennsylvania, in addition to the Block Operators, also maintained an Agent's position at Altamont. Train Order work for both Carriers was exclusively performed by the PRR Block Operators. On or about April 1, 1958, the Pennsylvania abolished the Block Operators' positions, and the only employe remaining was the Agent. The Agent had no standing as a Block Operator. Block Operators under the Agreement are classified as Group 2 employes; Agents under the Agreement are classified as Group 1 employes; hence, any train order or related communication work accrued to Block Operators only. Said Agreement is by such reference made a part of this submission.

Positions of Block Operators at Altamont had been maintained for 50 years or longer. Three such positions were listed in the October 1, 1918 Agreement. The current Agreement (February 1, 1951) lists Altamont as follows:

Location	Office Call	Trick	Position	Hourly Rate of Pay
Altamont	MA	1st	Block Operator	\$1.77
Altamont	MA	2d-3d	Block Operator	1.746"

On April 1, 1958, Altamont became a closed block station. On the dates of February 20 and 21, 1962, the Baltimore and Ohio detoured its trains

over the Pennsylvania from East St. Louis to Altamont, hence Altamont to Flora, where they re-entered the B&O main line. During the passage of these trains over the Pennsylvania they were controlled by the Pennsylvania Train Dispatchers; however, when they reached Altamont, they were without the needed train order authority to enter onto the B&O tracks for movement Altamont to Flora.

As a result of this situation, train employees of the B&O contacted the Pennsylvania Agent at Altamont and arranged for him to open the Altamont station from which station B&O train employees utilized the communication facilities to report their arrival at Altamont to both Pennsylvania and B&O Train Dispatchers and to obtain necessary train orders from the B&O Train Dispatcher. After receiving the necessary orders they reported their departure time from Altamont.

Inasmuch as those trains detouring via Altamont were unscheduled trains on the Springfield Sub-Division of the B&O, their movements were governed by train orders issued to them as "Extra" trains which authorized their entry to and movement over this sub-division Altamont to Flora. Rule 6 of the Baltimore and Ohio's Rules and Regulations of the Operating Department provides:

"Single Track - A train must not leave its initial station on any division or sub-division, or a junction, or pass from one of two or more main tracks to a single track, until it has been ascertained that superior trains due have arrived or departed."

Rule 200 further provides that:

"Extra trains must not be run without train orders, except where Rules 261 to 264, inclusive, are in effect."

Under the Operating Rules in effect on both railroads, it was necessary for all B&O trains moving through Altamont to report their arrivals and departures to both the Pennsylvania and B&O Train Dispatchers. It was also required that B&O trains obtain train orders to move Altamont to Flora. These train orders were obtained at Altamont and thus had the effect of reopening Altamont as a Block Office for the two days involved. The reporting of trains and handling train orders of Altamont constituted work belonging to Block Operators covered by the Telegraphers' Agreement on the Pennsylvania; hence the claim.

Other facts are related in the correspondence exchanged by the parties on the property, per the following:

"March 7, 1962

Mr. L. W. Huey
PTM&SO
Room 310, Union Station
Indianapolis, Indiana

Dear Sir:

I have the following claim made on behalf of various employees of the Telegraph Department:

As previously indicated, the telephone used by the B&O Conductors to contact their dispatchers is located in the Altamont Freight Station, and it is owned by the B&O Railroad. The Agent at Altamont is a PRR employe acting in a joint capacity for the Carrier and the B&O, and uses this telephone in contacting B&O Station Department personnel.

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether any work was performed by Baltimore and Ohio Railroad trainmen at Altamont Freight Station on February 20 and 21, 1962, in violation of the Scope Rule of the Telegraphers' Rules Agreement, and whether Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's objection to the jurisdiction of this Board must be passed upon before any denial or sustaining award could legally be adopted. Award 8039 (Elkouri); contra Award 8421 (Lynch).

Copying train orders by engine and train crews was the subject of Arbitration Award 153, National Mediation Board, which award involved these parties. Said award, in compliance with the Railway Labor Act, §8(m), requires that any difference arising as to the "meaning or the application" of the provisions shall be referred back to the Arbitration Board. Therefore, Carrier concludes that this claim is not properly before this Board, and that same should have been brought before the Arbitration Board.

With Carrier's conclusion, we cannot agree. The Elkouri Award, *supra*, cited by Carrier and which would appear to support its position, is, in fact, not authority under the present circumstances. Without immediately dwelling upon the facts and merits of this claim, it should be pointed out that the question here involved is whether or not certain circumstances occurred which violated the provisions of Arbitration Award 153 — not what might be the "meaning or application" of some provision or provisions thereof. Referee Elkouri had been called upon to decide whether or not "verbal permission in lieu of train orders" was encompassed within the provisions of Arbitration Award 153. Upon this distinction, we hold that this Board has exclusive jurisdiction of the claim. See Awards 13314, 14269 and 14270, by Referee Hamilton.

The parties stipulated to the following facts, to-wit:

"On February 20 and 21, 1962, Baltimore and Ohio Railroad train and engine service employes used the B&O telephone facilities at Altamont Freight Station . . . to copy B&O train orders and to report their trains 'on' and 'off' the Pennsylvania Railroad tracks between East St. Louis . . . and Altamont . . . which the Baltimore and Ohio Railroad was using as a detour . . . [because of] . . . a wreck on their property."

Further, the Organization alleged that the B&O crewmen obtained communications from the Carrier's dispatchers, and in addition, obtained train orders from B&O dispatchers regarding their proceeding upon B&O trackage.

Carrier emphatically denied the Organization's statement that B&O crewmen were in communication with its dispatchers. In said denial, Carrier stated that it had contacted the named dispatchers, and that they had refuted the Organization's allegations.

The burden of proving the communications between the B&O crewmen and Carrier's dispatchers rested at all times upon the Organization. After the Organization made its *prima facie* showing, the burden of going forward with the evidence shifted to the Carrier, and it met this burden by negating the Organization's evidence that the named dispatchers ever were in communication with the B&O crewmen. Thereafter, the burden of overcoming this negation and establishing its case was upon the Organization, but it did not go forward with such evidence — failing, as a result, to meet its burden of proof with regard thereto.

The Organization has no valid complaint regarding the B&O crewmen using a B&O telephone to obtain train orders from the B&O dispatchers regarding the use of B&O trackage, because the matter was exclusively a B&O matter, and the B&O is not a party hereto, nor is it in privity with the Claimants.

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;

That neither the Agreement or Arbitration Award 153 were violated by Carrier.

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 November 1967.

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