



Award Number 17584

Docket Number TE-16802

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
READING COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Reading Company, that:

CLAIM I

1. Carrier disregarded the Agreement between the parties from October 18, 1965, to and including October 25, 1965, when it assigned employees not covered by the Agreement to handle detour operations (blocking and communication work) at 65th Street, Philadelphia, Pennsylvania.
2. Carrier shall be required to compensate the following named claimants a day's pay for each date listed:
 - R. Traux—October 18, 1965, 1st shift
 - G. Kahmer—October 18, 1965, 2nd shift
 - R. Edelman—October 19, 1965, 1st shift
 - D. Alleman—October 19, 1965, 2nd shift
 - H. Perkins—October 20, 1965, 1st shift
 - S. Fetterolf—October 20, 1965, 2nd shift
 - J. Messenger—October 21, 1965, 1st shift
 - F. Holmes—October 21, 1965, 2nd shift
 - J. Messenger—October 22, 1965, 1st shift
 - T. Kirk—October 22, 1965, 2nd shift
 - R. Rosenberger—October 23, 1965, 1st shift
 - C. Coyle—October 23, 1965, 2nd shift
 - R. Rosenberger—October 24, 1965, 1st shift
 - J. Caselli—October 25, 1965, 1st shift

CLAIM II

1. Carrier disregarded the Agreement between the parties from October 26, 1965, to and including October 29, 1965, when it assigned employees not covered by the Agreement to handle detour operations (blocking and communication work) at Bell Road Crossover, Philadelphia, Pennsylvania.
2. Carrier shall be required to compensate the following named claimants a day's pay for each date listed:
 - E. Messerschmidt—October 26, 1965, 1st shift
 - D. Alleman—October 26, 1965, 2nd shift
 - S. Fetterolf—October 27, 1965, 1st shift

C. Peiffer—October 27, 1965, 2nd shift
 J. Messenger—October 28, 1965, 1st shift
 F. Holmes—October 28, 1965, 2nd shift
 D. Ronihan—October 29, 1965, 1st shift

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective April 1, 1946, as corrected September 1, 1951, and as further supplemented and amended, is available to the Board and by this reference is made a part hereof.

By General Order No. 185 dated October 14, 1965, effective October 18, 1965, Carrier arranged for the temporary removal from service of a section of one of two main tracks at and in the vicinity of 65th Street, Philadelphia, Pennsylvania. The track affected is designated No. 1 track. During the temporary period, westward trains were detoured over the other main track, known as No. 2 track, against the current of traffic between Darby Creek station and 65th Street.

In accordance with the General Order, a switchtender, an employee not covered by the Agreement, was stationed at 65th Street. His duties were to obtain from the Yardmaster at Darby Creek and furnish to all westward trains the necessary authority to make the detour movement. Each such movement was authorized only upon receipt by the train crew of written instructions on a form designated TD-116.

In addition to handling westward trains in the manner described, the switchtender was required to authorize, upon the prior authority of the Darby Creek Yardmaster, the movement of eastward trains beyond cross-over switches at 65th Street.

Copy of General Order No. 185 is appended hereto as T.C.U. Exhibit #1.

The more permanent basis for the temporary arrangements set out in the General Order are contained in a Reading Company issue of "General and Special Instructions No. 2," effective April 26, 1965. Special Instruction No. 9 therein reads as follows:

"DETOURING TRAINS.

The employes designated to authorize detour movements against the current of traffic in their respective yards, and issue Form TD-116, in accordance with Operating Rule D-160, are as follows:

Yard	Title
17th Street Subway	Yardmaster
West Falls	Yardmaster
Nicetown	Yardmaster
Port Richmond	Yardmaster
Erie Ave.	Yardmaster
Montgomery Ave.	Yardmaster
Wayne Jct.	Yardmaster
Bethlehem, Saucon Creek	Yardmaster
Norristown	Signalman 'NS' Tower, under direction of Chief Train Dispatcher
Lansdale	Signalman 'MA' Tower, under direction of Chief Train Dispatcher
Manville	Signalman 'WX' Tower, under direction of Chief Train Dispatcher
Darby Creek	Yardmaster"

and between the hours of 6:00 A.M. and 2:00 P.M. Sunday only, without proper signal from switch tender on duty.

Trains being detoured must approach grade crossings looking out for unwarned highway traffic.

C. RITTENHOUSE,
Superintendent"

Under GENERAL ORDER NO. 189, eastward trains to Darby Creek were detoured onto No. 1 Track between Eastwick and Bell Road by means of TD-116 authority issued at Eastwick. The switchtender at Bell Road simply controlled the switches and did not deliver or receive Forms TD-116 from the train crews. Similar to CLAIM I, this entire area is within yard limits and is governed by yard rules under the direction of the Yardmaster.

The Agreement Reading Company, Philadelphia, Reading and Pottsville Telegraph Company and The Order of Railroad Telegraphers, Effective April 1, 1946, Corrected September 1, 1951 is on file with Your Board and is incorporated herein by reference.

OPINION OF BOARD: Both of these Claims are based on Carrier's assignment of a switchtender at the Sixty-Firty Street crossover to provide detour switching. The occurrences complained of by the Organization unquestionably occurred within Yard limits. Therefore, that portion of Rule D-160 of the Rules for the Government of Operating Department promulgated June 24, 1945 under "Within Yard Limits", is controlling. The relevant part of said Rule D-160 is as follows:

"WITHIN YARD LIMITS

When necessary to make detour movements against the current of traffic, permission authorizing such movements must be secured from yardmaster or other employes designated by 'Special Instructions.'

Permission will be given on Form TD-116 and must designate the points between which such movements may be made

Form TD-116 must be written in manifold, delivering a copy to each employe addressed. A copy must be retained by each yardmaster and employe involved.

When yardmaster or other employes designated by 'Special Instructions' are not on duty, a train order may be used by the train dispatcher for such movement, when he can provide full protection."

.

"GENERAL

When a train is authorized to run against the current of traffic by train order or Form TD-116, engineman must keep a sharp lookout for stop or reduce speed signals and for trackmen, bridgemen, line repairmen, signal maintainers and other persons authorized to operate track cars, and unless otherwise provided must approach public crossings at grade carefully." (Emphasis added)

The above quoted rule places the entire yard under the jurisdiction of the Yardmaster insofar as detour movements against the flow of traffic

is concerned. This Rule, and prior practice on this property supporting it, was upheld by Special Board of Adjustment 591 Awards Nos. 11 and 15. Also, the Organization has failed in this instance, to show by probative evidence that the switchtenders involved did anything more than control the switches pursuant to the Yardmaster's instructions; or that the involved form TD-116 was handled (conveyed or received) by others than the Yardmaster and train crews.

Therefore, under authority of Special Board of Adjustment 591 Awards Nos. 11 and 15 coupled with Carrier's positive proof of past practice (since 1945) on this property, these Claims 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 the Agreement was not violated.

A W A R D

Claim I denied.
Claim II denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.