Award No. 18019
Docket No. TE-18346

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Pennsylvania-Reading Seashore Lines, that:

CLAIM NO. I

Car. File: 2-1-65 – Com. File: Same

1. Claim of the General Committee of the Order of Railroad Telegraphers that a violation was committed on the dates of December 1, 2, 3, 4 as in Scope and Agreement of Award No. 153.

2. Claim is in behalf of J. M. Kelly, an idle extra man, on the Extra List at the time of said violations.

CLAIM NO. II

Car. File: 2-2-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductor of Train No. WY-34 to copy Train Order No. 1350 and completed at 3:44 P. M., and Train Order No. 1366 for Conductor DiGiovacchino and completed at 8:04 P. M. on December 8, 1964. For Extra–Freight–North . . . Train Order No. 1363 phoned to Conductor – WY-34 and completed at 7:22 P. M., December 9, 1964. Train Order 1352 phoned to Conductor WY-34 and completed 3:56 P. M. Train Order No. 1378 phoned to Conductor–Extra–Freight–North and completed at 9:48 P. M., December 10, 1964. Train Order No. 1305 and completed at 1:57 A. M. Train Order No. 1372 phoned to Conductors for Extra–North on December 11, 1964. Train Order No. 1301 completed at 12:32 A. M., December 12, 1964.

Because of the violation of the Scope of Agreement and Arbitration Award No. 153, Claimant J. W. Wilson, who was available to perform the handling of the Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate account Extra Employe on Extra List.

3. The Scope of Agreement reserves the right to handle Train Orders to employes covered by the Telegraphers' Agreement. Arbitration Award 153 provides, effective on the P.R.S.L. on June 25, 1943, that Train and Engine Service Employes will not be required to copy Train Orders, except in emergencies, at a Block Station which has been closed since June 25, 1943.

CLAIM NO. III

Car. File: 2-3-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductor of Extra Freight North to copy Train Order No. 1370 and completed at 8:27 P. M., December 15, 1964. Train Order No. 1370 and completed at 8:33 P. M., December 16, 1964. Train Order No. 1369 and completed at 8:25 P. M., December 17, 1964. Train Order No. 1339 and completed at 4:43 P. M. Train Order No. 1340 and completed at 4:48 P. M., December 18, 1964. Also Train Order No. 1356 and completed at 8:21 P. M., December 18, 1964.

2. Because of the violation of the Scope of Agreement and Arbitration Award 153, Claimant J. M. Kelly, who was available to perform the handling of Train Orders at Swift, is entitled to eight (8) hours at the pro rata rate account Extra Employe on the Extra List.

CLAIM NO. IV

Car. File: 2-4-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductor of Extra Freight–North to copy Train Order No. 1370 and completed at 7:48 P. M., December 22, 1964. Train Order No. 1369 and completed at 9:12 P. M., December 23, 1964. Train Order No. 1375 and completed at 7:10 P. M., December 24, 1964.

2. Because of the violation of the Scope and Arbitration Award No. 153, Claimant J. M. Kelly, who was available to perform the handling of Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate account Extra Employe on the Extra List.

CLAIM NO. V

Car. File: 2-5-65 – Com. File: Same

1. Claim of the General Committee of the ORT on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductor to copy Train Order for northward movement for Freight at Millville. Train Order No. 1371 completed at 8:29 P. M. – Train Order No. 1370 completed at 7:41 P. M., on December 29, 30, respectively. Also C. T. 15 being phoned in to Movement Desk on December 30, 1964.

2. Because of the violation of the Scope of the Agreement and Arbitration Award No. 153, Claimant W. J. Krause, who was available to perform the handling of the Train Orders at Swift Tower is entitled to eight (8) hours at the pro rata rate.

CLAIM NO. VI

Car. File: 2-6-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductors to copy Train Orders for Northward movements from Millville. Train Order No. 1362 completed 8:14 P. M., January 5, 1965; Train Order No. 1388 completed 8:28 P. M., January 6, 1965; Train Order No. 1372 completed 4:47 P. M., January 6, 1965; January 7, 1370, and 1355, January 8, 1965.

2. Because of the violation of the Scope and Arbitration Award No. 153, Claimant J. W. Wilson, who was available to perform the handling of Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate, account extra employe on the Extra List.

CLAIM NO. VII

Car. File: 2-7-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductors of Freight Trains North to copy Train Orders No. 1363 completed 5:09 P. M., Train Order No. 1376 completed 9:07 P. M., January 11, 1965; Train Order No. 1222 completed 11:38 A. M., Train Order No. 1375 completed 8:56 P. M., January 13, 1965; Train Order No. 1361 completed at 8:34 P. M., January 14, 1965, and Train Order No. 1358 completed at 7:42 P. M., January 15, 1965.

2. Because of the violation of the Scope and Arbitration Award No. 153, Claimant J. W. Wilson, who was available to perform the handling of Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate account extra employe on Extra List.

CLAIM NO. VIII

Car. File: 2-8-65 – Com. File: Same

1. Claim of the General Committee on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductors of Extra Freights North to copy Train Order No. 1370, January 19, 1965; Train Order Nos. 1382–1368–1391, January 20, 1965; Train Order No. 1373, January 21, 1965; Train Order No. 1359, January 22, 1965; Train Order No. 1358, 1363, January 23, 1965.

2. Because of the violation of the Scope and Arbitration Award No. 153, Claimant J. M. Kelly, who was available to perform the handling of Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate account of being extra employe on the Extra List.

CLAIM NO. IX

Car. File: 2-9-65 – Com. File: Same

1. Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania-Reading Seashore Lines that the Carrier violated the Scope of the Agreement and provisions of Arbitration Award No. 153 when it permitted and/or required Conductors of Extra Freights to copy Train Order No. 1370 on January 26, 1965; Train Order No. 1382 on January 27, 1965; Train Order No. 1380 on January 28, 1965; and Train Order No. 1372 on January 29, 1965 for Northward Movements.

2. Because of the violation of the Scope and Arbitration Award No. 153, Claimant J. M. Kelly, who was available to perform the handling of Train Orders at Swift Tower, is entitled to eight (8) hours at the pro rata rate account of being Extra Employe on Extra List.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated on various provisions of the collective bargaining Agreement entered into by the parties effective January 1, 1945. Employes submitted their claims to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by Agreement rules and applicable provisions of law. The claims were discussed in conferences between representatives of the parties on February 16, 1965 and April 16, 1965.

At conference on the latter date, it was agreed that these nine claims would be held in abeyance "for consideration and review pending final determination in case identified as No. 12-1-64." Claim in that case was appealed to the Third Division and sustained in Award 16156 in March, 1968.

Thereupon another conference was held on May 22, 1968. Carrier again disallowed the nine claims.

The controversy presented here arose on December 1, 1964, when a train service employe copied a train order in a yard office at Millville, New Jersey. A block station, known as "Swift", had been maintained by the Carrier at Millville until November 23, 1964. It had been manned by block operators, covered by the aforementioned Agreement, who had copied and otherwise handled all train orders addressed to trains at Millville. Upon the closing of "Swift", however, Carrier had such train orders copied by block operators at Glassboro, New Jersey, some 22 miles away. Then the orders were telephoned to, and copied by, train service employes in the Millville Yard Office. Award 16156, above, disposed of claims for such handling which occurred on November 23, 24, 25 and 27, 1964.

meeting date for the purpose of further reviewing the claims. Copy of General Manager's letter dated April 30, 1968, attached as Exhibit K.

Conference was held on May 22, 1968. In the conference the Carrier stated its position that Award 16156 was erroneous. The Carrier reiterated its position that the Millville Yard Office and former Swift Block Station are two separate and distinct facilities, and that trainmen on northward trains have always copied train orders at Millville Yard Office since it was established at its present location. The Carrier further reiterated that Millville Yard Office was never an open block station, that trainmen can properly be required to copy a train order at Millville Yard Office, and that such action does not constitute a violation of Arbitration Award No. 153. Copy of General Manager's letter dated July 5, 1968, setting forth the discussions in conference and denying the claims, is attached as Exhibit L.

Subsequently, these claims were progressed to this Division.

(Exhibits not reproduced.)

OPINION OF BOARD: The same basic questions which are presented in this case were before the Board in Award No. 16156, involving these identical parties. We have restudied the issues which were discussed at length in that Award and Arbitration Award No. 153. After thoroughly reviewing the record we adopt the opinion of Award No. 16156 as controlling in the instant case.

The basic issue is whether the prohibition against copying of train orders by train service employes applies only at the precise physical spot where telegraphers formerly worked, or extends to any point within the confines of the station. This issue, in connection with Arbitration Award No. 153, first arose and was decided in Award 13314. The Referee clearly explained the reasons for holding that the prohibition cannot logically be held to apply only at the precise spot where the telegraph office formerly existed, but must extend to any place within the limits of the station in accordance with both common sense and railroad usage. The same result obtained in Awards 14269, 14270, 14271 and 17486.

However, although this Board has found that a violation of the Agreement did occur, the record indicates that some of the claims for damages should be denied. Awards of this Board have held that employes are not available for work, or entitled to compensation in lieu thereof, when their unavailability is occasioned by reason of the Hours of Service Act. Representative of such awards are Awards 2729, 3849, 4975, 6843, 8981, 8984, 9475, 10815, 10956, 15947 and 17928.

The record indicates positions worked by Claimants on certain dates involved in this case:

"Claimant J. M. Kelly, Case No. 2-1-65, worked First Trick in the Message Office on claim date of December 1, 1964. On this date train order 1363 was made complete at 8:01 P. M. Having worked first trick on this date it is apparent that Claimant was not available under the Hours of Service Act to perform service on the second trick.

Claimant J. W. Wilson, Case No. 2-2-65, worked Second Trick in the Message Office on December 9, 1964. On this date train order 1363 was made complete at 7:22 P. M. Since Claimant was already assigned and working, it is clear that he was not available for service at Millville.

Claimant J. W. Wilson, Case No. 2-2-65, worked third trick at Woodbury on December 12, 1964. On this date train order 1301 was made complete at 12:22 A. M. Since Claimant was already working at Woodbury, it is clear he was not available for service at Millville.

Claimant J. M. Kelly, Case No. 2-4-65, worked First Trick in the Message Office on claim date of December 22, 1964. On this date train order 1370 was made complete at 7:48 P. M. Having worked first trick on this date it is apparent that Claimant was not available under the Hours of Service Act to perform service on the second trick.

Claimant J. M. Kelly, Case No. 2-4-65, worked First Trick in the Message Office on claim date of December 23, 1964. On this date train order 1369 was made complete at 9:12 P. M. Having worked first trick on this date it is apparent that Claimant was not available under the Hours of Service Act to perform service on the second trick.

Claimant W. J. Krause, Case No. 2-5-65, worked Third Trick at Glassboro on December 28, 1964. On December 29, train order 1371 was made complete at 8:29 P. M. Having performed service on the Third Trick of December 28 Claimant was not available under the Hours of Service Act to perform service at Millville on the second trick.

Claimant W. J. Krause, Case No. 2-5-65, worked Third Trick at Glassboro on December 30. Train Order 1370 was made complete at 7:41 P. M. that date. Claimant Krause could not have performed service at both Millville and Glassboro on December 30 without violation of the Hours of Service Act.

Claimant J. W. Wilson, Case No. 2-6-65, worked Third Trick at Glassboro on January 4, 1965. On January 5, 1965, at 8:14 P. M., train order 1362 was made complete. Having worked third trick of January 4 it is apparent that Claimant could not have worked the second trick of January 5 without violation of the Hours of Service Act.

Claimant J. W. Wilson, Case No. 2-7-65, worked Third Trick at Atlantic on January 11, 1965. On January 11, 1965, train order 1363 was made complete at 5:09 P. M., and train order 1376 was made complete at 9:07 P. M. Claimant Wilson could not have performed service at both Atlantic and Millville without violation of the Hours of Service Act.

Claimant J. W. Wilson, Case No. 2-7-65, worked Third Trick at Glassboro on January 12, 1965. Train Order 1222 was made complete at 11:38 A. M. and order 1375 was made complete 8:56 P. M. on

January 13. Having performed service on the third trick January 12, Claimant was not available under the Hours of Service Act to perform service on the first or second trick January 13.

Claimant J. W. Wilson, Case No. 2-7-65, worked Second Trick at Brown on January 14, 1965. Train Order 1361 was made complete at 8:34 P. M. on that date. Claimant could not have performed service at Millville on the second trick and also at Brown on the second trick the same date.

Claimant J. W. Wilson, Case No. 2-7-65, worked Second Trick at Brown on January 15, 1965. Train Order 1358 was made complete at 7:42 P. M. that date. Claimant could not have performed service at Millville on the second trick and also at Brown on the second trick the same date.

Claimant J. W. Kelly, Case No. 2-8-65, worked Third Trick at Tuckahoe on January 19, 1965. Train Order 1368 was made complete at 4:59 P. M., order 1382 was made complete at 7:05 P. M. and order 1391 at 8:41 P. M., January 20, 1965. Having performed service on the Third Trick January 19, Claimant was not available under the Hours of Service Act to perform service at Millville on the second trick."

Claims for dates as indicated above, when Claimants were not available for service to be performed are 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 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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

CARRIER MEMBERS' DISSENT TO AWARD NO. 18019, DOCKET NO. TE-18346

We dissent for the reasons set forth in detail in Carrier Members' Dissent to Award No. 16156, involving a similar dispute between these same parties.

G. C. White
R. E. Black
P. C. Carter
W. B. Jones
G. L. Naylor

SPECIAL CONCURRING OPINION, AWARD 18019, DOCKET TE-18346

Decision of the basic issue in this case is in conformity with a well-established line of precedent awards which have correctly resolved the issue. We are in full agreement.

However, we are convinced that when the Referee entertained Carrier's contention that certain of the claimants were unavailable and then denied their compensatory claims on that basis, he committed error that should be challenged.

The claims in this docket were handled to a conclusion on the property along with those submitted to this Board in Docket TE-15921 and decided by Award 16156. The Employes, hoping to avoid the necessity of submitting a multitude of claims involving a single issue, sought and secured an agreement with Carrier to hold in abeyance all of the claims except those submitted in TE-15921. The idea, of course, was that whatever decision was rendered would be dispositive of those held in abeyance.

The agreement, however, did not specifically bind the parties to apply the prospective award, although obviously that was the real intent.

When Award 16156 was rendered, the Carrier refused to apply it to the pending claims, and then, for the first time, contended that some of the claimants were not available to have performed the work because of the Hours of Service Act. This contention was then presented to the Board and recognized by the Referee.

We think the contention was merely an afterthought, injected after handling of the claims in the usual manner was completed on the property, and, as such, should not have been considered.

Furthermore, the contention, if it had properly been raised, was invalid. Carrier made no effort to utilize the services of the claimants to perform the work. If it had done so, each of them could have performed the required work without any violation of the Hours of Service Act, although they could not have worked a full eight hours.

The Carrier's contention should have been rejected, and the claims should have been sustained, just as those in Award 16156 were sustained. To the extent indicated herein, we consider this Award 18019 to be erroneous and of no value.

C. E. Kief
Labor Member

CARRIER MEMBERS' REPLY TO SPECIAL CONCURRING OPINION, AWARD 18019, DOCKET TE-18346

The Labor Member's view that the Referee should have rejected the Carrier's contention that certain claimants were unavailable because of the Hours of Service Act is erroneous. The claims were still in process of being handled on the property, having been held in abeyance pending decision in Docket TE-15921. Furthermore, the parties had agreed to extend the time limits for decision. Clearly, the handling on the property had not been concluded. But, even if the issue had not been raised in the handling on the property, it would have been entirely proper for the Referee to consider such issue in accord with our Award 10956 to the effect that "The Hours of Work Act, like the Railway Labor Act, is substantive law which takes precedence over procedural matters, past practices, and issues of fact."

The Labor Member's contention in the Concurring Opinion that each of the claimants could have performed the required work without any violation of the Hours of Service Act is a new contention not previously advanced, and not supported by the record. In fact, as indicated in the Opinion in Award 18019, the record reflects to the contrary, and points out that in some instances claimants were on duty elsewhere when the orders in question were issued at Millville, the location involved in the dispute.

G. C. White
R. E. Black
G. L. Naylor
W. B. Jones
P. C. Carter

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.