

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19405
Docket Number SG-19234

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Buffalo and East):

On behalf of D. A. Nolen and J. W. Kelly for additional compensation account not recalled as required by the Merger Agreement nor worked full time as required by the Signalmen's Agreement, and that their positions be bulletined as required by the Signalmen's Agreement. (Carrier's File: 245-M)

OPINION OF BOARD: On May 20, 1964, the former Pennsylvania Railroad Company and the former New York Central Railroad Company entered into an agreement with their Signal Department employees. This agreement was for the protection of employees in the event of a merger of the new companies. On February 1, 1968, the two companies merged. The Claimants in this case, Nolen and Kelly, were on a furloughed status prior to the merger. They were entitled to be recalled to service on the date of the merger in accordance with the merger agreement. Carrier, in this instance, has computed Mr. Nolen as being entitled to 17 days per month and has computed Mr. Kelly to be entitled to 11 days per month on the basis of one-twelfth of the total days they worked during the 12 months period prior to the effective date of the merger. The Organization contends that Claimants should have been placed on a full time basis (40 hours per week minimum) and that they should be paid for all time lost for the reason that they were not timely recalled. The Organization also contends that this position should be bulletined. Carrier contends that under Section 1(e) of the Merger Protective Agreement, this dispute should be submitted to an arbitration committee for consideration and determination and that this Board has no jurisdiction to hear this matter. Carrier also contends that the claim has been properly computed; and that since the involved Claimants were part time employees, prior to the Merger Agreement, Carrier was under no obligation to bulletin these positions.

This Board finds that this dispute should have been referred to the Arbitration Committee provided for and agreed to by both parties under the Merger Protective Agreement. This Board must refuse to accept jurisdiction in this case. See Section 1(e) of the Merger Protective Agreement involved in this dispute.

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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 no jurisdiction to decide the dispute which is the subject matter of this claim.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.