

CASE NO. 5
Award No. 22
Docket No. TE-8318
ORT Case: 1785

SPECIAL BOARD OF ADJUSTMENT NO. 310

The Order of Railroad Telegraphers
and
The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Incorrect hourly rate of pay being paid to first, second and third trick Block Operators at Girard, Ohio. Rate Schedule as shown on Page 21, effective February 1, 1951, base rate of \$1.854 should apply." (Lake Division Case No. LD-19186-System Docket No. 209)

FINDINGS:

Section 19 (a) and (b) are as follows:

"(a) An employee shall not be required to throw ground switches except in cases of emergency, unless the regular duties of the position include the performance of such services.

"(b) When the duty of throwing ground switches is regularly assigned to a position, the rate of pay of such position shall be adjusted by agreement, in writing, between the duly accredited representative and the proper officer of the company."

The "throwing of ground switches" here referred to and now in Regulation 4-S-1 means the situation where an operator must leave his tower, descend to the ground and walk to the location of the ground switch, and there throw such switch.

When, on September 20, 1949 the 11 ground switches were interlocked to the interlocking machine at Girard, there ceased to be any requirement for Block Operators "to throw ground switches" within the meaning and intent of Article 5, Section 19 (a) and (b), or Regulation 4-S-1 of the current agreement.

The rate of Block Operators having been increased through agreement by four (4) cents per hour when they had to throw such switches, the Carrier was under obligation to serve notice on the Organization that it was removing the requirement that these employees throw ground switches, and to negotiate for the removal of such differential if the differential was added to the rate through negotiation. That which requires agreement for its doing, requires agreement for its undoing.

The only question remaining then is the exchange of correspondence between the parties which established the wage differential.

The General Chairman's letter, which was in confirmation of the originating letter of the Carrier and dated August 23, 1947, stated:

"If and when switchtender positions are restored on any or all of the three tricks, this differential of four (4) cents will be discontinued on such tricks with notification to the representatives accordingly."

Conceivably, restoration of the switchtender positions any time after August 23, 1947 would have eliminated the need for the Operator to throw ground switches. Thus the parties (a) agreed to the differential for throwing the switches, and at the same time (b) agreed that the differential would be discontinued without further agreement when the need for it, i.e., "the throwing of ground switches" was eliminated by the Carrier.

For these reasons, this claim is denied.

AWARD:

Claim denied.

Signed this 10th day of April, 1961.

/s/ E. A. Lynch
E. A. Lynch, Chairman

/s/ C. E. Alexander
C. E. Alexander, Carrier Member

/s/ R. J. Woodman
R. J. Woodman, Employe Member
DISSENTING

