ORT CASE 2113
DOCKET NO. TE-9377
AWARD NO. 42
CASE NO. 39

SPECIAL BOARD OF ADJUSTMENT NO. 310
The Order of Railroad Telegraphers
and
The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Philadelphia Division, that J. D. Cramer, regularly assigned employe, Leverman at Day, 11.59 to 7.59 A.M., relief days Wednesday and Thursday, was improperly paid for services at Pennroad, during the period from August 20th to September 7th, inclusive, and is entitled to an adjustment in compensation, in accordance with the provisions of the Schedule Agreement on the following basis: an additional 8 hours' pay pro rata rate for each of the following dates for being required to work off the regular hours of his assignment of his regular position, August 20th and 21st, 1st trick Pennroad August 22nd and 23rd, 2nd trick Pennroad, August 27th and 28th, 1st trick Pennroad, August 29th and 30th, 2nd trick Pennroad, September 3rd and 4th, 1st trick Pennroad, September 5th and 6th, 2nd trick Pennroad, Rules 4-G-1 and 4-F-1(e), 4 hours at the punitive rate for August 24th, August 31st and September 7th, for services performed at Town, middle trick, on relief days of his regular assignment, Rule 4-J-1, 8 hours pro rata rate for August 26th and September 2nd, for being suspended from his regular position at Day, Rule 4-G-1." (Philadelphia Division Case 14778 - System Docket No. 317)

FINDINGS:

The Organization is here seeking an additional 8 hours' pay, pro rata rate for each of certain dates "for being required to work" off the regular hours of Claimant's assignment.

Claimant was not "required" to do this work. He asked Carrier, in a letter dated August 15, 1955, for the assignment in question. His request was based on the fact that Pennroad Station is .8 miles south of Shippensburg Station and only a short distance from Claimant's home, whereas his regular assignment requires over 80 miles a day travel time.

There is no proof here of any violation of the Agreement. Carrier acted at Claimant's request and cannot be held for a punitive claim.

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

R. J. Woodman, Employe Member

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DISSENT TO DOCKET TE-9377

The majority of this Special Board have reached a decision apparently unaware of the subject matter of the claim presented. In addition they have reached an erroneous conclusion that there is no proof of any violation of the Agreement and because the Carrier acted at Claimant's request it cannot be held for a punitive claim.

In its findings the majority allege that the Organization is seeking an additional 8 hours' pay, pro rata rate for each of certain dates "for being required to work" off the regular hours of Claimant's assignment. Three distinct penalties are evident in the Employes' Statement of Claim. The first part of the claim asked for 8 hours' pay as provided in Regulation 4-F-1 (e) and 4-G-1 when the Claimant was required to work off his assigned hours. The second part asked for 4 hours at the punitive rate when the Claimant performed service on the rest days of his regular assignment as provided in Regulation 4-J-1. The third part of the claim asked for 8 hours' pay when the Claimant was suspended from work altogether on August 26th and September 2nd, also provided for in Regulation 4-G-1. Cognizant of the entire claim the Carrier specifically enumerates each item on page 14 of its Ex Parte Submission. By confining its decision to only one portion of the claim the majority have failed in their responsibility.

The majority says: "There is no proof here of any violation of the Agreement." Many Awards of the Third Division were cited as proof that the Agreement had been violated. In particular, this Carrier admitted a violation and paid the penalty in Award 6773 when an employe was suspended from working his regular assignment under the same rule as appears in the present Agreement as Regulation 4-G-1. The Claimant knew his actions constituted a violation when he asked for the assignment "without additional expense to the Company."

Compounding the above errors, the majority states: "Carrier acted at Claimant's request and cannot be held for a punitive claim." The Third Division ruled to the contrary so many times it is inconceivable how the majority could reach such a conclusion. In addition to Awards 6324, 5924, 5174, 4461, 3785, 3517, 3416, 2602, 946, 548 and others referred to by the Organization in its submissions, we find that the same neutral member issuing this decision took an opposite view in Awards 8375 and 8508. He said in Award 8375:

> "From the record in this case it is quite clear that Carrier's action prior to the filing of the instant claim, <u>while done to accommodate the personal wishes of the claimant</u>, was in violation of the applicable agreement." (Emphasis ours)

The same neutral member found the Carrier responsible for the actions of an employe in Award 8508, even though the Carrier had not "required" the employe to perform the service in question.

The reasoning in the instant Award is not consistent with the precedents established by the Adjustment Board and is contrary to the evidence placed before it. No less than the Supreme Court has this to say about the precedents established by the Board:

"The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provides opportunities for a desirable degree of uniformity in the interpretation of Agreements throughout the nation's railway systems."

For the reasons stated, the Award is erroneous and this member has no hesitancy in disassociating himself from the majority in this case.

s/ RUSSELL J. WOODMAN

Russell J. Woodman
Employe Member