

SPECIAL BOARD OF ADJUSTMENT NO. 132

PARTIES:

THE ORDER OF RAILROAD TELEGRAPHERS
THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY

AWARD IN DOCKET NO. 77

STATEMENT
OF CLAIM:

(a) The Carrier violated and continues to violate the provisions of the Agreement between the parties when it required and continues to require employees not covered by the Agreement to perform work coming within the scope of the Agreement in connection with handling of train movements at Great Kills, New York.

(b) Commencing with October 3, 1953 and each subsequent date thereafter that the practice continues, the Carrier will be required to pay to the senior, idle employee (extra in preference) one day's pay of eight hours for each day of the violation.

FINDINGS: Upon arrival at Great Kills, conductors of trains turning at that point report their arrival by telephone to the dispatchers, advise as to the passing of opposing trains and secure permission to cross over from Track No. 1 to Track No. 2. Effective October 3, 1953 a push button was installed between main tracks 1 and 2 for the protection of the cross-over movement which button was also pushed by the trainmen.

The employees cite Article 1 (Scope) in support of this claim as well as the Seniority, Bulletining and Assignment rule.

The Carrier resists this claim, asserting (1) it has been an established practice for years for crews turning at Great Kills to call the Dispatcher and secure permission to cross-over. (2) Requiring the trainmen to operate the push button was not an infringement upon the Telegraphers' Agreement and (3) The claim is barred by the operation of the time limitation rule.

The Scope Rule in the applicable agreement is similar to that generally found in Telegraphers' Agreements. It lists the classifications of employees covered and does not describe any particular work. It is, however, a well established principle that the usual customary and traditional work performed by the classifications of employees listed in a Scope Rule is work which is covered by the agreement and that the performance of that work by employees not subject to the Agreement is violative thereof. In the instant case it appears that a number of trains are scheduled daily to turn at Great Kills and the trainmen are reporting their arrival, reporting the passage of opposing trains and securing permission from the dispatcher to cross-over. These are not isolated instances, but are a daily occurrence. In effect, the trainmen are blocking trains with the dispatcher in violation of the Scope Rule which covers block-operators. We are not impressed with the Carrier's argument with respect to practice since we feel that there is a clear violation present in this case. Further, although the push button device may have been the instigating force which brought this claim about, we wish to make it clear that we are not basing our decision on that factor.

With respect to the time limitation argument advanced by the Carrier, the record does not show when the first formal money claim was made. Article 25 (with exceptions not applicable here) provides that claims for compensation growing out of the interpretation and application of this agreement shall be presented within sixty (60) days of the date of the occurrence out of which they arise. Under that provision claims for dates more than 60 days prior to the date when the time claim was first filed are barred. The failure to file a claim on a continuing violation within 60 days of the first violation in itself does not estop the employees from asserting claim for current and future violations.

We find that claim (a) should be sustained and that claim (b) should be sustained except that claims for any date more than 60 days prior to the date when the time claim was first filed are barred.

AWARD

Claim (a) sustained. Claim (b) sustained to extent indicated in Findings.

Francis J. Robertson
Francis J. Robertson
Chairman

B. N. Kinkead
B. N. Kinkead,
Employee Member

T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
23rd day of August, 1957.

