

Case No. 1
Award No. 1
ORT Case No. 1616 (TE-7459)

SYSTEM BOARD OF ADJUSTMENT NO. 310

The Order of Railroad Telegraphers

and

The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Claim of the Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad, that in June 1952, the Vincennes Branch was made a secondary track and the handling of trains by written train orders was changed to handling by verbal permission which has been substituted for written train orders, except in the case of a passenger train which must receive written permission in lieu of written train orders. On June 30, 1952 Bushrod Block Limit Station, created after May 1, 1938, was declared closed by General Order. However, Bushrod continues to be shown as a station in the time table and trains are receiving verbal permission to operate, in lieu of written train orders, from Bushrod to points on the Vincennes Branch and to points on the Bushrod Linton Summit Branch. The giving of verbal permission in lieu of written train orders is but a subterfuge to evade the penalty prescribed by Arbitration Award 153. The only essential difference being that these orders are not written out by the train crews, in all other respects written records are made by Dispatchers and Operators. The work not having been abolished at Bushrod, the station has not been closed and claim is hereby made for a days pay for the oldest idle extra man or a call for an idle regular man for each verbal permission transmitted to an employe, at Bushrod, not covered by our Agreement." (Southwestern Division Case No. 26 - System Docket Number 198)

FINDINGS:

We are here concerned with the Vincennes Branch which was made a Secondary Track in June of 1952. A Secondary Track is one where the authorized speed is not to exceed 30 miles per hour and where there is no scheduled passenger train operation. Carrier asserts Train Orders are not there required for operation; permission for trains to proceed is given verbally.

Bushrod Block Limit Station, created on the Vincennes Branch after May 1, 1938, was closed by general order on June 30, 1952; trains are receiving verbal permission to operate, in lieu of written train orders, from Bushrod to points on the Vincennes Branch and to points on the Bushrod Linton Summit Branch.

It is argued by the Organization that each time this was done, it was a violation of the Agreement, and a Block Operator should have been called to handle this verbal order and block the trains. It argues further that despite the closing of Bushrod, the work required at the Block Limit Station had not been abolished; it remained to be performed to the same extent and manner as prior to its abolishment.

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Award 153 provides that except in emergencies, Train and Engine Service Employees shall not be required to copy train orders at "x x x block stations which have been closed or abolished since May 1, 1938 or at block limit stations which have been established since May 1, 1938 or which may hereafter be established.

Organization maintains that substitution of verbal orders in lieu of Train Orders "is a device to get around Award 153."

An examination of the Opinion of the Chairman of the Board of Arbitration which handed down Arbitration Award 153 shows the following:

"The remaining functions carried on over the telephone by train and engine service employees which would be prohibited by the (Organization's) proposed rule include the blocking and OS-ing of trains, and in general the reporting of train locations, obtaining permission to proceed, information concerning block indications and other items which facilitate train movements.

"For periods up to 40 years or more trainmen and enginemen have been telephoning operators to report clear on sidings, for permission to occupy main tracks and secondary tracks, for block indications, for permission to cross over, to copy train orders when necessary, to copy clearance forms and for various other purposes. The present generation of trainmen and enginemen on this Carrier has never known any other type of operation. x x x"

As a matter of fact, the only restriction placed on the use of the telephone by the Award of Arbitration Board 153 is the copying, except in emergencies, of "Form 19 Train Orders."

What Organization is seeking here in this claim is what it sought before Arbitration Board 153. There it failed.

In granting Organization a Rule, limited to Form 19 Train Orders, Board 153 Chairman specifically noted that

"this rule is not intended to prohibit or limit any of the practices not expressly described therein, including movements on secondary tracks, and the methods of facilitating the movement of track cars or any of the types of work trains."

This claim will be 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, Employee Member

DISSENT

No Board of Adjustment has the authority to modify or amend existing rules but that is what we find the end result to be based on the "Findings" and "Award" of the majority. The Third Division ruled in Award No. 5703:

" *** we cannot make a rule nor modify existing rules ***.
Renegotiation thereof in the manner provided by the Railway
Labor Act is the proper source of authority for that purpose."

Arbitration Award No. 153 awarded a train order rule, it did not amend the Scope Rule of the currently effective agreement extant between the parties. Yet here we have the majority making a finding and an award that has gone beyond the Arbitration Award. The majority has here actually modified and amended the Scope Rule.

Arbitration Award No. 153 awarded a rule which would not require Train and Engine Service Employees to copy train orders, except in emergencies, at points where and during the hours when Block or Telegraph or Telephone Operators are scheduled to be on duty, or at block stations which have been closed or abolished since May 1, 1938, or at block limit stations which have been closed or abolished since May 1, 1938 or which may thereafter be established. The Scope Rule of the agreement contains the classifications: "Telegraphers, Telephone Operators (except Telephone Switchboard Operators), Block Operators." The Arbitration Board awarded a train order rule as attested by the following:

"NATIONAL MEDIATION BOARD
ARBITRATION BOARD
Arbitration Case No. 153
Case No. A-3521

In the Matter Of:

DISPUTE BETWEEN THE PENNSYLVANIA RAILROAD COMPANY AND ITS EMPLOYES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF RAILROAD TRAINMEN, AND THE ORDER OF RAILROAD TELEGRAPHERS.

AWARD OF BOARD OF ARBITRATION

Pursuant to an arbitration agreement entered into by the above named parties on March 28, 1951, in accordance with the provisions of the Railway Labor Act, the Board of Arbitration consisting of Winfield G. Salmonson, Carrier-named member, C. H. Keenan, Employee-named member, and David L. Cole, neutral arbitrator, who was designated Chairman, having duly heard the parties and considered their evidence and arguments, does hereby make its award as follows:

1. It declines to award the rule proposed by the Organization as set forth in Paragraph Fourth of the aforementioned arbitration agreement.

"2. It awards a rule in the language following, to become effective on February 15, 1952, and to continue in effect until it is changed or modified in accordance with the provisions of the Railway Labor Act, as amended:

'Except in emergencies, Train and Engine Service Employees shall not be required to copy train orders at points where, and during the hours when Block or Telegraph or Telephone Operators are scheduled to be on duty, or at block stations which have been closed or abolished since May 1, 1938, or at block limit stations which have been established since May 1, 1938, or which may hereafter be established.

(1) The emergencies referred to shall include only storms, washouts, tornadoes, obstructions to tracks, slides, accidents, casualties, wrecks, engine or equipment failures, hot boxes, or break-in-two's, provided such cause or causes would result in serious delay and were not anticipated by the train dispatcher when the train was at the last open block or telegraph station.

(2) At block stations which have been closed on certain tricks or during certain hours continuously since May 1, 1938, the restrictions of this rule shall not apply on such tricks, or during such hours.

(3) The train orders referred to in this rule are those of the type now designated as Form 19 Train Orders in their various forms, and as illustrated on pages 35 through 42 of the Carrier's Book of Rules, edition of September 25, 1949.

(4) The restrictions of this rule shall not apply to temporary block stations which have been closed or abolished or which may hereafter be closed or abolished. Temporary block stations as referred to herein, are defined to be block stations opened for a temporary limited purpose only, such as the clearing or repairing of tracks, bridges or other facilities, construction projects, or the movement of some special purpose train or trains.'

BOARD OF ARBITRATION

/s/ David L. Cole,
Neutral Arbitrator and Chairman

/s/ Winfield G. Salmonson,
Carrier Arbitrator

December 12, 1951

DISSENT BY BOARD MEMBER C. H. KEENAN

I consider the award agreed to by the majority of the members of this Arbitration Board to be very improper and unjust to the involved employees; it seriously discriminates against them, and is not responsive to the evidence of record. Moreover, this award fails to require the correction of practices that violate the inherent fundamental principal of craft rights and representation as contemplated by the Railway Labor Act, as amended.

Therefore, I decline to participate in the rendition of the award.

/s/ C. H. Keenan,
Board Member."

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As may be noted the rule, directed at Train and Engine Service Employees, is that they shall not be required to copy train orders ... at block stations closed or abolished after May 1, 1938, or at block limit stations established after that date except in emergencies. An Understanding, reached in 1938 between the parties, not only embraced the handling of train orders by Train and Engine Service Employees but all other block operator's work at well, such as blocking and re-
porting trains, handling switches and clearance cards, transmission and receiving
messages, and all other related duties assigned and accruing to the block station
positions at the time of abolishment. The Arbitration award did not alter or
otherwise annul the Scope Rule or the Oral Understanding as to block operator's work being off limits to other employees if the office was one closed after May 1, 1938.

The Arbitration award is supplemental to the Scope Rule and to the Oral Understanding of May 1, 1938, it is not a substitute thereof, hence we here have an erroneous award.

/s/ Russell J. Woodman

Russell J. Woodman
Employee Member