

CASE NO. 44
AWARD NO. 20
DOCKET NO. TE-10079
ORT CASE 2372

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, that the agreement was violated when Third Trick Sturgis Block Station was allegedly abolished by General Order No. 709 effective 8:00 A.M. December 14, 1954, when in fact, the work continued to be performed by employees of another craft not under the coverage of the Telegraphers' Agreement.

Claim is made that Block Operators P. M. Dick and W. G. Boone be made whole for any and all losses in pay sustained and expenses incurred by reason of their being required to vacate their positions and exercise their seniority and further, that Block Operators listed below shall be allowed a day's pay for each and every day of alleged abolishment effective with and subsequent to December 14, 1954, and during the continuance of said alleged abolishment such employees being available and qualified to perform the work on the days of the position indicated as follows:

E. W. Kyle, December 14, 1954, and each following Tuesday.
E. W. Kemmerley, December 15, 1954 and each following Wednesday.
E. A. Kemmerly, December 16, 23, 30, 1954.
M. E. Peterson, January 6, 1955, and each following Thursday.
F. L. Stevens, December 17, 1954 and each following Friday.
C. A. Bechtel, December 18, 1954 and each following Saturday.
C. E. Myers, December 19, 1954, and each following Sunday.
M. D. Schenk, December 20, 1954 and each following Monday.

Regulations 4-I-1, 2-0-1 (a) (3), 8-M-1, Scope Rule and Arbitration Award #153 governing."
(Fort Wayne Division Case No. 156 - System Docket No. 308)

FINDINGS:

The Joint Statement of Agreed Upon Facts in this docket reveals 11 instances of where train orders were copied at Sturgis following the closing of the third trick December 14, 1954.

Such acts constitute a violation of Arbitration Award No. 153.

We so find and direct that claim be sustained for each of such eleven instances of a train order being copied at Sturgis from December 14, 1954 when third trick position was abolished until its restoration February 13, 1956.

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Organization's reliance on a prior offer to settle that portion of the claim dealing with K Cards -- an offer subsequently withdrawn by the Carrier -- is of no moment in the light of our prior finding that Arbitration Award No. 153 does not restrict Carrier in this respect.

AWARD:

Claim sustained in accordance with findings.

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 EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF RAILROAD TRAINMEN, AND THE ORDER OF RAILROAD TELEGRAPHERS

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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

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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."

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 as well, such as blocking and reporting 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