

Award No. 5
Case No. 6
ORT Case No. 1814 (TE-8379)

SPECIAL BOARD OF ADJUSTMENT NO. 310

The Order of Railroad Telegraphers

and

The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Claim of Block Operator H. McLain, regularly assigned 4:00 P.M. to 12:00 Midnight at Glenmont, Ohio, or the oldest available Extra Operator who did not have 40 hours in week beginning August 24, 1953 for 8 hours at time and one half for McLain or 8 hours straight time for oldest Extra Operator available and who could have worked this violation. Claim based on meeting of trains Extra 8980 South and Extra 9499 North at Millersburg by Train Order No. 127." (Lake Division Case No. LD-19823 - System Docket No. 218)

FINDINGS:

This claim involves the use of the phone to get permission for the train to come out of a siding and resume its trip.

The Chairman of Arbitration Board No. 153, in his opinion accompanying the Award, stated:

"The remaining functions carried on over the telephone by train and engine service employees which would be prohibited by the (Organizations's) proposed rule (which Arbitration Award No. 153 did not grant) 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. x x x"

The Organization here seeks what it sought before Arbitration Board No. 153. It failed in that endeavor, and its claim here will be 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

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.

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 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