

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that Terminal Trainmaster H. R. Haines, on temporary leave from that position, should not have been used in extra tower service on June 28th, 1934 and that the extra towerman who was for this reason deprived of that day's work, be compensated in the amount Mr. Haines received for this service."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

There is in evidence an agreement dated September 1, 1927, containing as a part thereof a wage schedule effective May 1, 1927.

The parties have jointly certified to the following:

"H. R. Haines with a seniority date of February 10th, 1926 as Towerman, Los Angeles Division, under Telegraphers' Agreement, was promoted to position of Terminal Trainmaster at Indio, Los Angeles Division, several years ago. On or about June 1st, 1934, while serving as Terminal Trainmaster at Indio, he vacated the position on account of illness and H. W. Maxwell was appointed Acting Terminal Trainmaster at Indio vice Mr. Haines.

"On June 28th, 1934, Mr. Haines was used as an extra unassigned Towerman to fill a temporary vacancy at Naud Junction, Los Angeles Division. Mr. Haines' seniority antedated that of any other extra unassigned Towerman on the Los Angeles Division Towermen's Seniority List. Effective September 14th, 1934, Mr. Haines resumed service as Terminal Trainmaster at Indio."

H. R. Haines is carried on the Towermen's Official Seniority List of the Los Angeles Division with the notation that he is on leave of absence under the provisions of Rule 23. Paragraph (d) thereof, involved in this dispute, is quoted:

RULE 23. LEAVE OF ABSENCE

"(d) Leave of absence will be granted in case a telegrapher is promoted to an official position with the Southern Pacific (Pacific Lines), or with the Order of Railroad Telegraphers when duties of such position are confined to Southern Pacific (Pacific Lines). Telegraphers accepting official positions with the railroad company will forfeit their assigned positions at the expiration of ninety (90) days and will not be privileged to file applications for vacancies in schedule positions as provided for in Rule 19."

Due to heat prostration, Mr. Haines discontinued work on the position of Terminal Trainmaster at Indio on May 16, 1934; he entered the hospital at Los Angeles and was advised by the Company physician in charge of the case not to return to Indio particularly during summer months.

Following the vacation of the position, the carrier by official notice dated June 20, 1934, appointed Mr. H. W. Maxwell, Acting Terminal Trainmaster at Indio, vice Mr. H. R. Haines, and advised the Local Chairman for the Telegraphers by letter June 21, 1934, of this action, stating that under the provisions of Rule 23 (d), above quoted, that Mr. Haines was seemingly permitted to exercise his seniority as extra towerman. Mr. Haines presented himself for extra work as towerman, and was used in said service on June 28, 1934, to fill vacancy on position of Towerman, Naud Junction. He was similarly used at that point and at other points on various dates to and including September 2, 1934.

On or about September 4, 1934, Mr. Haines was removed from the list of available towermen of the Los Angeles Division, and following a few days leave of absence thereafter, was, effective September 14, 1934, appointed to the official position of Terminal Trainmaster at Indio.

The employes contended that Mr. Haines had not relinquished his position as Terminal Trainmaster averring that statements which he had made during June indicated his intention to return to his position at Indio in September, and further that the appointment by the carrier of Mr. Maxwell as Acting Terminal Trainmaster substantiated their contention, and consequently he, Haines, not having been definitely severed from his official position had no rights to extra unassigned work as a towerman—such use under the circumstances being in violation of Rule 23 as well as being contrary to all past practice and precedent covering such action.

The carrier stated that Mr. Haines was not on leave of absence from position of Terminal Trainmaster at Indio during the time he performed service as Towerman; instead, he vacated position of Terminal Trainmaster at Indio; his successor was officially and formally appointed; further that Mr. Haines did not hold any right or title to the position by agreement or otherwise, especially after his successor was appointed, and that his use as a towerman was in accordance with the rights conferred upon him by Rule 21 (g).

H. R. Haines was relieved from his position as Terminal Trainmaster at Indio by official notice dated June 20, 1934, and thereafter was entitled to serve as a towerman in accordance with his seniority in the towerman class as covered by the provisions of the Telegraphers' Agreement.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 16th day of April 1936.