

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, ROCK ISLAND AND PACIFIC
THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island & Pacific Railway, that the Carrier violated its contract with the Telegraphers when it allegedly abolished three tower positions at Bricelyn, Minnesota, which were, by mutual understanding, incorporated in said Agreement and, thereafter, required employes not covered by that Agreement, namely members of train crews, to manipulate the switches and signals which, theretofore, had been the duty of the towermen to operate; that the tower positions at Bricelyn be restored, bulletined and filled in accordance with the Telegraphers' Agreement."

EMPLOYES' STATEMENT OF FACTS: "It is the contention of the General Committee of the Order of Railroad Telegraphers that there is an agreement between the Chicago, Rock Island and Pacific Railway Company and the Order of Railroad Telegraphers, covering rates of pay and rules on working conditions, dated January 1, 1928, copies of which have been furnished to the Board, which agreement supersedes a former Agreement, dated April 1, 1924, in the wage scale of which is listed three tower jobs at Bricelyn, Minn., at rates of 53¢ per hour.

"It is the further contention of the Committee that on or about July 1, 1927, without notice to the General Committee, or Chairman, and without conference in accordance with Article 23 of the current Agreement, by unilateral action of the Carrier these three Bricelyn tower jobs were discontinued, and during the negotiations leading up to the consummation of the Agreement of January 1, 1928, the members of the Committee evidently being under the impression that the work of handling the levers in this tower being also discontinued they made no effort at, and did not insist on, continuing the jobs in the wage scale of the current contract.

"It has been disclosed, as shown by timetable rule 12-d of timetable No. 6, effective as of June 5, 1938, and some timetables prior thereto, that trainmen are instructed to, and do, handle the levers in this Bricelyn plant to the exclusion of telegraphers, in violation of the agreement."

POSITION OF EMPLOYES: "As shown in our statement, the telegraphers' Agreement dated April 1, 1924 indicated in the wage scale three tower positions at Bricelyn, Minn., at rates of 53¢ per hour. This agreement was

"Trainmen have since July 1, 1927, been letting themselves over the crossing at Bricelyn, and no complaint was filed against this practice until local chairman O'Kelly of the telegraphers brought up the subject in July 1938.

"At the present time we only have one train, each way—No. 433 operating from Albert Lea, Minn. to Estherville, Iowa, daily except Sunday, and No. 434, on the return trip, daily except Monday."

POSITION OF CARRIER: "As indicated in our Statement of Facts, two towerman positions in the interlocking plant at Bricelyn, Minn. were discontinued in December 1924, and the third discontinued on July 1, 1927. These positions were abolished because there was no necessity for them.

"When the new telegraphers' agreement was negotiated effective January 1, 1928, (this is the current agreement) Bricelyn tower was not included in that agreement as the positions of towermen were not then in existence, and it was recognized by both the carrier and union representatives that there was no need to continue the positions of towermen at Bricelyn, Minn. rail crossing of the Rock Island and C. & N. W.; therefore, no violation of the agreement in operating over this crossing in the method that was then in effect and which method is still in effect at this time. The telegraphers' union representatives in our schedule negotiations resulting in the January 1, 1928, agreement made no contention that the Bricelyn tower positions should be included in said agreement as they recognized the positions had been properly discontinued and there was no dispute regarding these former towermen positions being discontinued. The representatives of the employes knew it was proper to operate over the crossing in the manner indicated.

"There is no necessity now for the services of towermen at Bricelyn. We only have one train, making a round trip daily, except as indicated in our Statement of Facts. It requires only a few minutes of the trainman's time to perform duties to enable them to make the crossover.

"It would be absurd to create a position of towerman, even for eight hours a day, to make necessary operations for movement of one train each way six days per week over a rail crossing, and the expenditure of money to maintain such unnecessary position would be a burden on the carrier and one which would result in uneconomical operations.

"The discontinuance of the towerman positions was authorized by the State Railway Commission, thus establishing the fact that the present method of operation is in accordance with public necessity, convenience and safety.

"To support our contention we call the Board's attention to Labor Board Decision 3926, Docket 4363, of November 23, 1925, Order of Railroad Telegraphers v. Texas & Pacific Railway Company.

"Claim should be declined."

OPINION OF BOARD: Specifically, the claim presented is that the three "tower positions at Bricelyn be restored, bulletined and filled in accordance with the Telegraphers' Agreement." As shown by the record it was the practice of the parties to this dispute to negotiate into their agreements, the current agreement included, a list of positions and their rates of pay. However, the three tower positions at Bricelyn were omitted from the current agreement. It has been the uniform holding of this Board that the scope of an agreement may be made as broad or narrow as the parties may stipulate. Cf. Awards 383, 389, and 1230. It has further been the constant holding of this Board that it cannot make a new agreement for the parties so as to include positions not covered in the agreement the parties themselves have made. Cf. awards above cited and in addition 42, 871, 1079, 1100, 1102, 1116, and 1149.

Under the facts presented in this case it must be held that the failure to negotiate into the current agreement the three tower positions at Bricelyn

left these positions outside the scope of that agreement. The restoration of these positions is not within the authority of this Board.

The claim for a restoration of these three tower positions must be denied under the terms of the current agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.