

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Lines, that the Carrier has violated the telegraphers' agreement in using an employe not covered thereby as relief towerman in Golden Gate Tower, March 2nd to April 8th, 1940, inclusive; that H. F. King, an extra available employe, carried on the Telegraphers' seniority roster of that district, be paid the difference between what he may have earned in other service between those dates and what he would have earned on this position had he been used to fill this temporary vacancy."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute. Copies thereof are on file with the National Railroad Adjustment Board.

"March 1, 1940 Towerman W. E. Edwards, regularly assigned to a position within the Golden Gate Tower, was injured, necessitating relief. Mr. Edwards did not resume duty on his regular position until July 1, 1940.

"Signal Maintainer Mr. W. Bussey, an out-sider, not having telegraph seniority was used to relieve Towerman Edwards March 2, 1940 to April 8, 1940, both inclusive, on instructions of Mr. W. F. Douglas, Signal Supervisor.

"Extra telegrapher, H. F. King, whose name is shown on the telegraphers' seniority roster with a date of September 19, 1939 was available to be used on the Edwards' vacancy, but was not assigned to it.

"The position in question, that of Edwards', was bulletined as temporary and assigned to and filled by Telegrapher Widgon, effective May 29, 1940."

POSITION OF EMPLOYEES: "The background is that Towerman W. E. Edwards, occupying a tower position within the Golden Gate Tower, was injured March 1, 1940. Mr. W. Bussey, a signal maintainer, not covered by the telegraphers' agreement was placed on the Edwards' vacancy effective March 2, 1940 by Signal Supervisor Douglas and remained thereon to and including April 8, 1940 when he was relieved by extra towerman Urion. Mr. Urion with a seniority date of June 25, 1938 was occupying a vacancy at Merced Tower March 1, 1940 to and including March 14, 1940. Extra telegrapher-towerman H. F. King, seniority date September 19, 1939 was unassigned March 2, 1940, therefore, he was available for the Edwards' vacancy.

"The Telegraphers' Agreement reads, in part:

"Prior to August 22nd, 1940, Mr. L. C. Miller, Local Chairman, wrote Mr. V. J. Imhoff, Chief Dispatcher of the Carrier, under date of June 11th, 1940, as follows:

'Several kicks about Signalman Bussell being used at Golden Gate Tower March 2nd until about April 8th, and am wondering if any extra qualified man was available during this period. Ladner holds copy of letter to WFD written by towermen at that point, saying he was qualified to handle.

'I do not consider a man has a complaint unless he is interested enough to go there and prepare himself beforehand.'

"On July 2nd, 1940, Local Chairman Miller wrote Mr. G. W. Simpson, Superintendent of the Carrier, as follows:

'At Golden Gate Tower, a signalman was used as towerman from March 2nd to April 8th, while a qualified towerman was available at Fresno during this entire period, as indicated by Mr. Imhoff's letter to you last week.

'Award 707, Referee Spencer said in part:

"The carrier in assigning extra work covered by the Telegraphers' Agreement to an employe not on the official seniority list of the Telegraphers' is in violation * * * of the agreement between the parties and does not permit the carrier to assign extra service to employes not appearing on the Telegraphers' roster, even though there may be no extra available employe at the time. If the carrier fails in one of these ways, it is under an obligation to call regularly assigned employes and to pay them for their service on an overtime basis."

'Mr. Imhoff did not know there was a vacancy at Golden Gate tower until he received your bulletin, advertising a temporary vacancy.

'Under the above circumstances, we feel the oldest available extra towerman should be paid for this entire period, minus any he may have earned. Will you please so arrange?'

"Granting that Local Chairman Miller's communication, first above quoted, filed a claim, it is a fact, first, that that date was approximately 64 days after the disappearance of the condition complained of and 34 days too late to come within the period for which any payment claimed would be allowed under Article V-(i) of the Telegraphers' Schedule; second, that claims in Local Chairman Miller's communication of July 2nd, 1940 and in General Chairman Elliott's communication of August 22nd, 1940 were not presented until, respectively, 85 days and 136 days after the disappearance of the condition complained of and, respectively, 55 days and 106 days too late to come within the period for which any payment claimed would be allowed.

"The claim has not been allowed."

POSITION OF CARRIER: "The claim does not have any validity under the Telegraphers' Schedule because of non-compliance with Article V-(i) thereof by the employe and/or his representatives; therefore, it is not material whether there was available during the period March 2nd to April 8th, 1940, inclusive, a qualified employe holding seniority under the Telegraphers' Schedule."

OPINION OF BOARD: The record in this case sustains the contention that H. F. King should have been placed on the temporary vacancy which occurred March 2, 1940. However, under the provisions of Article 5-(i), as interpreted by the parties, claim for compensation should be denied.

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 the 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 H. F. King should have been placed on the temporary vacancy March 2, 1940. Claim for compensation denied.

AWARD

Claim sustained to extent indicated in Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1941.