

Award No. 1527
Docket No. TE-1344

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul W. Richards, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY
(Holman D. Pettibone, Trustee)**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Indianapolis & Louisville Railway, that the Carrier violated the telegraphers' agreement when effective March 26, 1940, the Carrier removed all of its telegraph service at its Crawfordsville, Indiana, station and transferred same to Ames Tower, Indiana, an office operated by the Peoria & Eastern Railway not covered by the telegraphers' agreement, and further violated the said agreement by improperly removing C. A. Jenkins, the regularly assigned 1st trick telegrapher at Crawfordsville, Indiana, from his position on April 16th, 1940, and improperly allowing him to displace the regularly assigned third trick telegrapher at Crawfordsville, Indiana, causing resulting displacements; that C. A. Jenkins and all other employees who were resultingly displaced by these violations of contract and improper acts of the Carrier, shall be restored to their former positions and be reimbursed for all wage loss suffered retroactive to the date they were improperly removed or displaced including employees on the extra list who were thereby deprived of employment."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing date July 1, 1929, as to rules of working conditions and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

"The 1st trick telegrapher position at Crawfordsville, Indiana, is covered by said agreement and has been so covered for many years.

"Effective March 26, 1940, the Carrier unilaterally removed from said agreement all of the work of its telegraph service at Crawfordsville and transferred same to Ames Tower, Indiana, an office operated by the Peoria & Eastern Railway not covered by the telegraphers' agreement with the Carrier.

"Effective April 16, 1940, the Carrier unilaterally removed C. A. Jenkins from his regularly assigned position of 1st trick telegrapher at Crawfordsville and improperly allowed him to displace the regularly assigned employee on the 3rd trick telegrapher position at Crawfordsville causing resulting displacements."

POSITION OF EMPLOYEES: "The scope rule of the prevailing telegraphers' agreement, which we invoke, provides:

improperly allowing him to displace the regularly assigned third trick telegrapher at Crawfordsville.' Instead, the force was reduced and Mr. Jenkins exercised his rights in accordance with Rule 3-G of the Agreement, which reads:

'In the event of a reduction of force at any office, the youngest man in the service at office affected will be displaced, and the last trick will be considered abolished, the remaining men to be moved back on tricks according to their seniority, retaining their rates of pay.'

When the position of first trick telegrapher was abolished, Mr. Jenkins, being the senior employe, exercised his rights under the above quoted rule and displaced the other telegrapher.

"The General Committee makes the statement that the Carrier violated the Telegraphers' Agreement in the instant case, but it does not specify wherein the Agreement has been violated, nor does it give any reference to the rules it believes have been violated. The Carrier is at a loss to know under what rules, or wherein, the Committee considers there has been a violation. It is the Carrier's contention, and it has so proven herein, that there has been no violation.

"The Carrier submits:

1. There has been no violation of the Telegraphers' Agreement, and the Committee has not shown wherein the Agreement has been violated.
2. It is within its rights in requiring employes in Ames Tower to perform such work as is being done there; a right exercised and existing since the contract of December 5, 1904, was executed.
3. It was within its rights under the Telegraphers' Agreement in discontinuing the position at Crawfordsville station.
4. An Award should be rendered in favor of the Carrier."

OPINION OF BOARD: Into the revision of the agreement of the parties effective July 1, 1929, there were negotiated three positions of telegraphers at Crawfordsville, Indiana. Two of these positions, the first and third tricks, were being maintained by carrier up to March 26, 1940. Shortly prior to that date the carrier messaged these operators at Crawfordsville as follows:

"Effective midnight, Tuesday, March 26, Crawfordsville will be discontinued as a train order office, train order signal will stand at proceed position, effective same date Ames will be made a train order office."

Ames, since 1906, had been and still is an interlocking tower at the intersection of the instant carrier, the Pennsylvania Railroad, and the Peoria and Eastern, which latter company will be hereinafter referred to as the Big Four Company. At Ames no public railroad station is maintained. It is 1.1 miles south from the carrier's station at Crawfordsville. In carrying out the messaged orders, the carrier, on March 26, 1940, discontinued all handling of telegraph and telephone work at Crawfordsville station, where the first and third tricks were located, and thereafter handled all that work at Ames, where the telegraphers have at all times been employes of the Big Four Company. On April 8, 1940, the first trick was ordered taken off. The holder of that position then displaced the third trick operator. All this having been done by the carrier without conference or agreement with the employes, the latter claim that the carrier violated the scope rule of the agreement in evidence.

The three railroads mentioned, in a writing dated December 5, 1904, contracted that the Big Four Company would install, maintain and operate, at the crossing of the three railroads, for the use of all three companies, a modern interlocking plant, the cost of construction, maintenance and operation to be borne by the three companies in the same proportion that the number of functions governing track movement of the companies bears to the total number of functions performed by the entire plant. The companies other than the Big Four were to pay the latter company their respective proportions of the cost of construction upon completion of the plant and were to pay their proper proportions of the cost of maintenance and operation upon receipt from the Big Four of monthly itemized bills. To each company was reserved the right to have the plant control any additional switches or signals such carrier might install at its own expense including expense of necessary changes to the plant. Thereafter such company was obligated to pay for the maintenance and operation of such additional mechanism on a stated proportional basis. A further agreement in the writing was that the plant should be under the supervision of the Big Four Company, and operated by its employees, and that such employees should "render competent and impartial service to all the companies, and either company may by written request require the discharge of any of said employees for any omission of duty." The compensation of such employees was to be determined by the managing officers of the companies. The writing contained other provisions that seem not pertinent at this time. In pursuance of this contract, the plant was constructed and since some time in 1906, has been in operation, used by the three companies, and has been under the supervision of the Big Four Company and operated by the employees of that company.

From what has been recited from the contract between the three railroad companies, carrier says it clearly appears that it had a right to avail itself of the tower for telegraph and telephone work, pointing out it was a part owner and that the employees of the Big Four were to render impartial service to all the companies, and that the Big Four and Pennsylvania had for a long time been using the tower operators for telegraph and telephone service. But in stating these things, carrier is seemingly talking about what its rights were as against the other two companies, what it could demand of them, under the agreement that was with them alone. What could be demanded against the employees under a contract to which they were strangers is nil. Of course, if at some time after the contract was made between the three companies, the employees became parties thereto, or in some manner agreed to make their rights under their collective bargaining agreement subservient to rights and privileges the carrier acquired under its contract with the other two railroads, then carrier's discussion of what its rights were as against the two other companies would require consideration.

But in the opinion of the Board the record does not warrant a finding that the employees became parties to the contract of December 5, 1904, or ever agreed, expressly or by any fair implication, that their rights under their collective bargaining agreement that are here involved were to be subservient to the carrier's rights and privileges under its tri-party contract.

The fact of part ownership in the plant is not material to the question, for the Ames plant was an outside agency as to the C. I. & L. Railway Company with which the Order of Railroad Telegraphers had an agreement covering the positions in question. Third Division Awards Nos. 180 and 323.

Carrier in argument attaches importance to the fact that seemingly during the years the employees have made no objection to levermen employed by the Big Four Company handling levers at Ames for this carrier's trains despite the Employees' agreement with the carrier applying to levermen as well as to telegraph and telephone operators.

But from the record here it could not be determined what were the reasons for or the implications in any want of objection mentioned had that been the issue in the case. Something that does appear in the docket is a list of a number of other interlocking plants used by this carrier with other railroad companies. At several of them the levermen or levermen-telegraphers are this carrier's employes, and at others are employes of some other company. One of these plants where this carrier uses wire service dates back to 1902, and others to 1904 and 1905. Some plants where this carrier does not use wire service date several years still farther back in point of time. But without more facts than there are at hand the Board is of the opinion that it would be a mere guess or conjecture to say that non-objecting to handling of levers by Big Four employes at Ames, where they had been since 1906, carried with it an agreement or admission by the employes that telegraph and telephone service at Ames belonged to Big Four employes. Good reasons on account of what may have been the original arrangements, or difficulties growing out of the long lapse of time, or perhaps a willingness to waive, if all the facts were searched out, might readily explain and indicate limitations upon the alleged attitude of the employes with respect to handling of levers at Ames. Under the record before us there appears to be no reasonably sure ground for associating failure to object to levermen at Ames with the question of telegraph and telephone service, a question not raised until 1940. Nothing in the docket shows that until then it had occurred to the employes that there was room for dispute as to their rights to the telegraph and telephone work at Crawfordsville.

Carrier lays stress on a telegraph and a telephone line having been cut by carrier into the Ames Tower some years prior to this dispute arising. One object was to facilitate movement of trains at the Tower during a period when traffic was heavy. Carrier's train dispatchers also state that they have sent train orders over these wires to the Ames Tower. But without any showing as to the frequency or the circumstances, their statement is not particularly impressive in view of the fact that Ames never was one of carrier's designated train order offices until made so in March, 1940, and in view of the Employes' denial of any knowledge of train orders being sent there. These were all the carrier's acts, and not of such significance that it can be said that the Employes have been estopped thereby from asserting the terms of their agreement.

It is the opinion of the Board that the carrier violated the scope rule cited by Petitioner when without negotiation or agreement it removed all the telegraph and telephone work from its Crawfordsville, Indiana, station and transferred same to Ames Tower, and when it took off the first trick operator by order of April 8, 1940. Employes who have suffered loss of pay by reason of said violation are to be reimbursed by carrier and the violation of the agreement is to be removed by carrier adopting some arrangement within the rules of the agreement which will remove the violation.

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 the carrier violated Rule 1A of the agreement in evidence, being the scope rule cited by Petitioner, entitling employes to reimbursement for

loss of pay sustained by reason of said violation, and making it the duty of the carrier to remove the violation.

AWARD

Claim sustained on the basis and to the extent set forth in the Board's Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1941.