

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

**BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Baltimore and Ohio Chicago Terminal Railroad Company, that the Carrier violated the Telegraphers' Agreement when, on September 22, 1939, it arbitrarily removed the three employees regularly assigned to the positions in the Tower at 49th Street, Chicago, Illinois, who had been temporarily relocated in a small building on the ground near 48th Street, following destruction of the Tower at 49th Street by fire on September 10, 1939, and transferred from said employees work coming within the scope of said Agreement, viz., reporting trains to the train dispatcher and other employees handling train movements, also blocking trains and keeping a record of trains passing 48th Street, which work was transferred to and has since been handled by employees not coming within the scope of said Telegraphers' Agreement; and the further claim that the three employees arbitrarily removed by the carrier and permitted to assert displacement rights, also other employees covered by said Agreement who have been resultantly displaced, shall be restored to their former positions and compensated for all wage loss.

JOINT STATEMENT OF FACTS: On September 10th, 1939, the B. & O. C. T. interlocking plant governing movement of B&OCT and Pennsylvania Railroad trains over the crossing at 49th St. was totally destroyed by fire. A small building was moved to a location on the ground between the B. & O. C. T. and Pennsylvania Railroad tracks near 48th St., or a distance of about 600 feet north of where the tower was located. After the tower was destroyed, the three employees who held the positions in the tower prior to its destruction were assigned to duty in the small building on the ground, herein referred to, and continued to perform the service necessary for the movement of trains, in addition to handling ground switches. Hand signals given by these employees are used to govern the movement of trains within the interlocking limits.

Effective September 22, 1939, the three employees mentioned above were relieved by instructions of the management and permitted to assert displacement rights under the provisions of Telegraphers' agreement, and effective same date three switchtenders holding rights under the provisions of the Trainmen's agreement were assigned to the work.

POSITION OF EMPLOYES: An Agreement bearing date December 1, 1928 is in effect between the parties.

The scope of said Agreement reads as follows:

"This schedule will govern the employment and compensation of telegraphers, telephone-operators (except switchboard operators),

OPINION OF BOARD: The salient facts upon which the decision here must depend are these: For some period of time before and up to September 10, 1939, the Carrier here maintained an interlocking plant at 49th Street in Chicago, Illinois. The plant was operated from a tower at that point by three towermen who came under the existing Telegraphers' Agreement. In general they performed the duties of reporting trains to the train dispatcher and other employes handling train movements, blocking trains and keeping records of certain passing trains. On September 10, 1939, the tower was completely destroyed by fire. Thereafter for twelve days the towermen occupied a small building near 48th Street where they performed the services necessary for the movement of trains by the use of hand signals and otherwise and in addition they handled the ground switches. On September 22, 1939, the three towermen were relieved from their positions and three switchtenders, who were under the Trainmen's Agreement, were assigned to this work. This situation continued to November 24, 1940, when a rebuilt interlocking plant was put into service at 49th Street, which has been handled by levermen covered by the Telegraphers' Agreement.

It is the contention of the claimant that the vacation of the positions of the three towermen and placement of the switchtenders was in violation of the agreement and that the towermen are entitled to be restored to their former positions and to compensation for the wage loss entailed.

At the outset it may be said that an unforeseen emergency was created which of necessity required a temporary change in operation methods at this point. In the light of necessity and in accord with the principles contained in First Division Award 3942, the three towermen were permitted temporarily to perform the necessary work here, including the handling of hand switches, which switch handling belonged to switchtenders under the Trainmen's Agreement.

Under the conditions created it was for the carrier to determine whether the methods of operation before the fire would be restored or new ones adopted to take their place. It chose to substitute a plan under which, if it permitted the towermen to perform the work beyond the emergency period, would have been an encroachment upon the rights of switchtenders under the Trainmen's Agreement. Instead, the towermen were dismissed and switchtenders took over.

Under a fair interpretation of the evidence presented here, the work taken over under the new plan was not covered by the Telegraphers' Agreement, except as to certain details, not primary or fundamental to positions of towermen. These detail acts and duties might be performed either by towermen or switchtenders in the line of performance of their regular duties. The particular details to which reference is here made were the receiving and giving necessary information regarding lining of switches and movements of trains in the area in question.

The Carrier, after the emergency period of twelve days, followed the only course that was open to it if it would avoid a violation of the rights of the switchtenders under the Trainmen's Agreement. It did not in so doing violate the Telegraphers' Agreement. On rebuilding and restoration of the interlocking plant it became the duty of the carrier to restore positions under the Telegraphers' Agreement.

The claim 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 the claim should be denied.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.