

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Ernest M. Tipton, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington & Quincy Railroad,

(1) That the agent-operator position at Girard, Illinois, declared reclassified by the Carrier on July 12, 1934, to that of small non-telegraph agent, was not so reclassified in fact;

(2) That the handling of communications service at that point has not been discontinued, but has either been improperly transferred to employees not covered by the Telegraphers' Agreement, or has been performed by the incumbent of the Girard agency;

(3) And that the scheduled hourly rate for agent-operator at Girard shall be applied to the position since July 12, 1934, and those employees, who have since occupied the position, be compensated accordingly.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing date September 1, 1927, as to rules of working conditions as amended by Mediation Agreement A-546 of January 1, 1939, and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

The position of agent-operator at Girard, Illinois, is covered by said agreement, and has been so covered for many years.

Effective July 12, 1934, the Carrier unilaterally removed from said agreement all of the work of its telegraph and telephone service at Girard, excepting the commercial telephone, and transferred same to the Girard Tower, Illinois, an office exclusively operated by the Alton Railroad, not covered by the Telegraphers' Agreement with the Carrier.

Effective July 12, 1934, the Carrier unilaterally reclassified the position of agent-operator at Girard, Ill., to that of small non-telegraph agent and arbitrarily reduced the rate of the position six cents per hour.

The Carrier's telegraph and telephone facilities were not removed from Girard Agency until about November 1940, during which period the incumbent agent, with the knowledge of the Carrier, used these facilities to conduct business of the Carrier; and since November 1, 1934, the incumbent agent, with the knowledge of the Carrier, has used the commercial telephone for transmitting and receiving messages and reports of record to and from the Girard Tower on the Alton Railroad.

**POSITION OF EMPLOYES:** The scope rule of the prevailing Telegraphers' Agreement, which we invoke, provides:

agent, which makes invalid the second contention and brings into play the admitted understanding of May 20, 1926 with respect to such reclassifications.

Insofar as schedule rules are concerned, the instant case presents a condition comparable to that which obtained in the dispute decided by Award 644, in which the Third Division said:

“Referring then to the agreement. There is no prohibition therein against changing a position from agent-telegrapher to small non-telegrapher without a conference and agreement with the Committee.”

In the award hereinabove referred to, the Third Division discussed to some extent questions of fact, lending particular emphasis to the meaning of “small non-telegraph agency.” In this respect, the historical background contained in the carrier’s statement of facts in regard to decline in business is peculiarly significant. The correctness of this classification at the town in question is further supported by the 1940 census, which reports the population of Girard, Illinois to be 1,741.

Summarizing its position the carrier finds that there is no basis for sustaining the claim of the petitioner because, (1) the employes at the joint interlocking tower may properly perform such service as may be assigned to them, and (2) the position in question is in fact a small non-telegraph agency. Therefore, there being no evidence of misapplication of a schedule rule, the alleged dispute is in reality a request for wage adjustment which is outside of the purview of authority conveyed to the National Railroad Adjustment Board under the Act of Congress which created it, and under which it functions.

**OPINION OF BOARD:** The effective date of the agreement is September 1, 1927. Under that agreement, the position of Agent-Operator (Agent-Telegrapher) at Girard, Illinois, was established with the rate of pay at sixty-three cents an hour. Effective July 12, 1934, the Carrier reclassified this position as that of a small non-telegraph agent with the rate of pay at fifty-seven cents per hour. This action of the Carrier was done without conference or agreement with the petitioner. At Girard, there is a tower at the interlocking plant at the intersection of the Alton Railroad with the Burlington Railroad, a distance of 1,056 feet north of the Girard Station of this Carrier. This tower is operated by the Alton Railroad, and the employes who work in the tower are employed by the Alton Railroad.

The petitioner contends the telegraph work at Girard was not discontinued, but it was turned over to the employes of the Alton Railroad at the tower who held no rights under the current agreement.

There can be no doubt that if there was no longer any telegrapher’s work remaining at this station, the Carrier could reclassify this station as a non-telegraph position. See Award No. 644.

From the record, there can be no doubt that some telegrapher’s work remained at this station which was handled at the tower. For instance, the agent at Girard transmitted a daily car report to the tower telegraphers, who, in turn, transmitted it to the Division Superintendent.

The Carrier contends that it had a right to do this because of a contract it had with the Alton Railroad dated October 12, 1899, which reads in part as follows:

“The persons employed by the parties of the first part (Alton R. R. Co.) to operate the said interlocking system shall be deemed and considered to be the servants and employes of both parties.”

The current agreement between the petitioner and this Carrier lists the stations to which the agreement shall apply, and the tower at Girard is not listed. There is nothing in the current agreement which permits the work at Girard Station to be performed by the employes at the tower. Whatever

rights this Carrier has at the tower is a matter between it and the Alton Railroad. The petitioner is not a party to that contract, nor has the petitioner in any way adopted that contract. The mere fact that this Carrier's contract with the Alton Railroad antedates its contract with petitioner would in no way make this agreement subservient to its contract with the Alton Railroad. See Awards Nos. 180, 323, 331, 951, and 1527.

The Board holds the Carrier violated the agreement when it reclassified this station to a non-telegraphic station; but since the record shows this claim was not prosecuted with proper dispatch, the claim for compensation should date from February 25, 1938, from which date it was advanced to the submission now considered.

**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 employees involved in this dispute are respectively carrier and employees 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 sustained in conformity with the above opinion.

#### AWARD

Claim sustained in conformity with this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.