

Award No. 4881
Docket No. TE-4931

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
CHESAPEAKE DISTRICT

STATEMENT OF CLAIM: (1) That the Carrier violated the Scope Rule and other rules of the Telegraphers' Agreement when it discontinued the third trick operator position at LaCrosse, Ind., on January 26, 1948, occupied by E. L. McLendon, and discontinued the second trick operator position at the same station on June 5, 1948, occupied by G. Crook, and discontinued Swing Position No. 22 at the same station on June 8, 1948, occupied by C. F. Bell, and, acting alone, it concurrently transferred all of the telegraph service of these positions to "QN" Tower, an office operated by the Chicago, Indianapolis & Louisville Railway Company not under the coverage of the Telegraphers' Agreement;

(2) That the Carrier further violated the terms of the Telegraphers' Agreement by improperly removing the said E. L. McLendon, G. Crook and C. F. Bell from their respective positions at the LaCrosse station and improperly allowed each of them to displace junior employees on other positions and causing resulting improper displacements; and

(3) That the said E. L. McLendon, G. Crook and C. F. Bell, and all other employees who were resultingly displaced by these violative and improper acts of the Carrier, shall be restored to their former positions and be reimbursed for all wage loss suffered as a result thereof and for all expense incurred under the rules of the telegraphers' agreement, including all employees on the extra list on the seniority district involved who were thereby deprived of employment.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 16, 1947, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

Prior to 3:00 P.M., January 26, 1948, the station at LaCrosse, Indiana, was a continuously operated block station and train order office, and has been so operated since October 1, 1932.

Prior to January 26, 1948, the Carrier maintained the following force of employees under the Telegraphers' Agreement at LaCrosse:

1 agent-operator,	hours	6:00 A.M. to 2:00 P.M. daily.
1 operator,	hours	2:00 P.M. to 10:00 P.M. daily.
1 operator,	hours	10:00 P.M. to 6:00 A.M. daily.

so understood. T&NO had the lawful authority to resume operation of the plant and, under the original contract, to use its own employees.

"This is not a case where Carrier is attempting to remove or farm out work covered in an agreement by some subsequent arrangement with a third party. Consequently, awards under such a situation are not pertinent. Nor is this a case where work has been improperly assigned to one outside the agreement, so awards on that basis do not apply.

"Since the work was removed, not by the Carrier, but by another assuming a superior right to control it, the claim must be denied." (Underscoring supplied.)

In the case here under consideration there was no abolishing of positions and turning the same positions over to other employees. This case involves return to Monon employees of positions they had always filled and had in their collective bargaining contract, but which had temporarily been suspended by agreement between the two carriers. It is clearly evident in this case, as in Award 3450, that Monon had superior contractual right to control the "QN" Tower positions.

* * * * *

In summation, it will be seen that the Chesapeake and Ohio has not taken any work belonging to its telegraphers and transferred it to Monon telegraphers. On the other hand, what is being done at "QN" Tower is merely a continuation of what has been required since the agreement of May 23, 1902.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization charges that effective January 26, 1948, and progressively June 5 and 8, 1948, the Carrier removed all of the Block and Train Order work from the Chesapeake and Ohio Railway Company (hereinafter referred to as the C. & O.) Station at LaCrosse, Indiana, in violation of the Scope Rule (No. 1); Rule 58, Handling Train Orders; and Rule 63, Terminating Rule.

The evidence shows that when the predecessor of the C. & O., the Junior Road, crossed the tracks of the Chicago, Indianapolis and Louisville Railway Company (hereinafter referred to as the Monon), The Senior Road, it was done pursuant to an agreement effective May 23, 1902, that the interlocking switch and signal system at the crossing (referred to as "QN" Tower), although installed at the expense of the C. & O., would be operated by the Monon. The evidence further shows that the Monon entered into agreements with the Telegraphers' Organization and currently has an agreement with that organization specifically covering the positions at the "QN" Tower.

During the period, however, from September 8, 1932, until July 23, 1946, an understanding existed between the C. & O. and the Monon that the operation of the "QN" Tower would be suspended "as a temporary measure of expense relief" without abrogating the 1902 agreement and subject to the right of either party to require the reopening of the "QN" Tower.

In 1946 the Monon determined that the re-establishment of the "QN" Tower was justified and the C. & O. built a new tower and interlocking plant at its expense, which, under the 1902 agreement, has been operated by the Monon since January 26, 1948. The current agreement between the Monon and the telegraphers covers these positions at the "QN" Tower.

Prior to the reestablishment of the "QN" Tower, the C. & O. did maintain continuously operated telegraphic service at the LaCrosse Station to take care of its independent train movements. It now, however, requires only one Agent-Telegrapher as it did in the period before the suspension of the

"QN" Tower operation in 1932. It is clear that the work at the LaCrosse Station, performed by the C. & O. telegraphers, was only in connection with C. & O. trains and did not relate to the operation of the crossing at the "QN" Tower. With reference to this work the carrier has exercised its right over many years to determine the number of telegraphers required in accordance with working conditions and the carrier did not violate the agreement in abolishing the second and third trick positions.

The work at the "QN" Tower has been done by Monon telegraphers during both periods of its operation, 1902 to 1932 and 1948 to date and has been covered by agreements during these periods so that it must be found that historically and contractually the work belongs to the Monon telegraphers.

If the operation of the "QN" Tower had not been suspended during the period 1932 to 1948, the Monon telegraphers would have continued to do the work in connection with the crossing. The situation of the continuous telegraphic service employing additional second and third trick telegraphers to handle the work was one of an indefinite nature subject to being affected by "another assuming a superior right" under the 1902 contract as amended to require the reestablishment of the tower and interlocking signal system. Award No. 3450.

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 Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of June, 1950.