

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
READING COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that

(a) the Carrier violated the provisions of the Telegraphers' Agreement when and because, effective October 3, 1951, as to the second and third tricks, and October 8, 1951, as to the first trick, it declared three "towerman" positions at East Hump, Rutherford, Pennsylvania, abolished but instead of actual abolishment and duties were unilaterally transferred to persons not covered by the said Telegraphers' Agreement;

(b) the three "towerman" positions shall be restored to the Telegraphers' Agreement and the employes assigned thereto at the time the positions were declared abolished shall be returned and paid the difference between what they would have earned at East Hump and what they have earned on other positions, plus the provisions of Article 22, from the dates of the declared abolishments until restorations and returns are effected;

(c) all other employes who were resultantly displaced in the exercise of seniority shall be returned to their former positions and paid the differences between what they would have earned on their former positions and what they have earned on other positions, plus the provisions of Article 22, from the dates of displacements until returns are effected; and

(d) for each working day and for work denied at East Hump from the dates of alleged abolishments until the positions are restored each of three extra or unassigned employes shall be paid a day's pay.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of April 1, 1946, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement of April 1, 1946, lists at Page 29: "Rutherford, East Hump, Towermen (3) Rate per hour \$1.19", and each preceding Agreement back to 1920 embodies the same listing, except the rate of pay has fluctuated in accordance with national patterns. The Scope Rules of these Telegraphers' Agreements, over the years, among the several classifications covered, have carried those of "Towerman", and "Tower and/or Train Directors".

The Order of Railroad Telegraphers, in the claim submitted to the Board, allege the Carrier violated the Telegraphers' agreement when it declined and continues to decline to bulletin and assign employees under the Telegraphers' agreement to the positions of car retarder operators at East Hump and requests the Board to require the Carrier to assign employees covered by the Telegraphers' agreement to such positions.

The Carrier denies that it has violated or continues to violate the provisions of the effective Telegraphers' agreement and maintains car retarder operators have not been and are not now included in the scope rule of the Telegraphers' agreement, nor does the agreement contain or make any reference to car retarder operation.

For reasons stated hereinbefore, the Carrier maintains the Board should not assume jurisdiction but should dismiss the case. However, should the Board consider otherwise and assume jurisdiction, the Carrier submits the class of employee assigned to positions of car retarder operator at East Hump, Rutherford, was in accordance and compliance with agreement with the Brotherhood of Railroad Trainmen and corresponds with the method and practice in effect on other railroads. There was no violation of the provisions of the Telegraphers' agreement.

To sustain the claim and require the Carrier to assign employees covered by the Telegraphers' agreement to car retarder operation would be in contravention with the provisions of agreement with the Brotherhood of Railroad Trainmen and involve the Carrier in a dispute with that organization.

Under the facts and circumstances and for the reasons set forth hereinbefore, the Carrier requests the Board not to assume jurisdiction in this dispute and to dismiss same. However, should the Board assume jurisdiction it is the Carrier's position that the claim is unjustified and not supported by the evidence, or meaning and intent of the rules of the Telegraphers' agreement and respectfully requests that the Board so find and deny the claim in its entirety.

This claim has been discussed in conference and handled by correspondence with representative of the Telegraphers' organization on the property. (Exhibits not reproduced.)

OPINION OF BOARD: On authority of Award No. 6203, and Award No. 6204, the Carrier's contention that this claim should be dismissed or remanded on account of lack of notice to the interested employees covered by its Agreement with the Brotherhood of Railroad Trainmen is denied.

The history of the development and utilization of the car retarder in the railroad industry was reviewed in Award No. 4712. In many respects the results flowing from the use of this instrumentality is comparable to those resulting from the adoption of Centralized Traffic Control equipment in dispatching offices. In Awards 4452 and 4768 the conclusion was reached that the controversies as to who should operate CTC machines presented jurisdictional disputes. Much of what was said in those Awards would be equally applicable here.

A showing made by the Carrier discloses that there is no uniformity on other railroads as to what group of employees operate car retarders. It also appears that when this dispute arose on its property this Carrier called for a conference with the representatives of the groups claiming to be entitled to operate its car retarders and that representatives of the Organization here before us participated in that conference, although nothing resulted therefrom. While these circumstances are not of themselves highly significant, they do point toward the conclusion that the matter in dispute is jurisdictional in character.

Under the circumstances, we feel obliged to remand the claim to the property for negotiation. To take any other course would place this Board in the position of writing a contract for the parties.

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 the National Railroad Adjustment Board does not have jurisdiction of the matter in dispute.

AWARD

Claim remanded to the property for the reasons suggested in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.

SPECIAL CONCURRENCE

DOCKET TE-6145—AWARD NO. 6205

The Carrier Members concur in the Findings and Award because remand of the dispute based on the jurisdictional issue conforms to petition for dismissed filed with the Division by the Brotherhood of Railroad Trainmen, but we disagree with that part of the Opinion concerning lack of due notice to all employees involved in this dispute; namely, the Car Retarder Operators represented by the Brotherhood of Railroad Trainmen.

Petitioner sought to gain certain work in connection with the operation of switches and signals from a central point which work was a part of the duties of the Car Retarder Operator, and thus to require two men to do the work of one.

For these reasons and those expressed in Award Nos. 5702, 5781, 6203 and 6204 notice should have been given the Car Retarder Operators, represented by the Brotherhood of Railroad Trainmen.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp