

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 it then declined and continues to decline to bulletin to and assign employees under the Telegraphers' Agreement to the three "towerman" positions which were established at West Hump, Rutherford, Pennsylvania, October 23, 1950;
- (b) the three "towerman" positions at West Hump shall be forthwith bulletined and assigned to employees under and in accordance with the rules of the Telegraphers' Agreement;
- (c) the employees who are assigned to the three positions as a result of (b) above, shall be paid the difference between what they would have earned at West Hump from October 23, 1950 to the date actually placed thereon and what they have earned on other positions; and
- (d) for each working day and for work denied at West Hump from October 23, 1950, until the positions are regularly filled by bulletin, each of three extra or unassigned employees shall be paid a day's pay.

EMPLOYEES' 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.

Among other classifications, the Telegraphers' Agreement Scope Rule lists the classifications of "towerman", "leverman" and "tower and/or train director."

Effective October 23, 1950, in a newly erected tower at West Hump, Rutherford, Pennsylvania, the Carrier put into operation certain apparatus which control signals and switches from a central point by the use of rotary type levers.

Having been informed of the proposed installation and knowing that the duties of operating switches and/or signals by means of levers from a central

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 employe assigned to positions of car retarder operator at West 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 employes 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: The facts pertaining to this claim are substantially like those involved in Award No. 6205, except that in the instant case there was no operation of switches and signals from a central point at West Hump prior to the establishment of the car retarder system, as there had been at East Hump.

If this point of distinction has any significance, it is more favorable to the Carrier than to the Organization. The disposition of the two cases must, therefore, be the same.

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 the National Railroad Adjustment Board does not have jurisdiction to hear the dispute.

AWARD

Case remanded in accordance with 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-6144—AWARD NO. 6206**

Our Special Concurrence in Award No. 6205 is equally applicable to this Award.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp