

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 April 1, 1947, it discontinued the three positions of "towerman" at Eastwicks without abolishing all of the duties thereof, but instead unilaterally transferred the remaining duties of those positions to employees of the Baltimore and Ohio Railroad who are not under the Reading Company Telegraphers' Agreement;

(b) the three "towerman" positions at Eastwicks shall be restored and those employees who occupied them immediately prior to April 1, 1947 shall be returned thereto and paid the difference between what they would have earned at Eastwicks and what they have earned on other positions from April 1, 1947 until restorations and returns are effected; and,

(c) all other employees who were resultantly displaced in the exercise of seniority shall be returned to their former positions and paid the difference between what they would have earned on their former positions and what they have earned on other positions from April 1, 1947 until returns are effected.

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.

The Telegraphers' Agreement on the Reading Company lists at Eastwicks, Philadelphia Division seniority district, three (3) tower positions. The working agreement between The Order of Railroad Telegraphers and the Baltimore and Ohio Railroad Company lists on that Carrier's Baltimore Division seniority district, three (3) leverman positions at East Side (Schuylkill Draw).

Interpretation No. 4 to Supplement No. 13 issued by the United States Railroad Administration April 30, 1919, described "towermen" and/or "levermen" as employees assigned to "operate interlocking switches and/or signals by means of levers from a central point". Three Reading Company employees

OPINION OF BOARD: Under an agreement between the Reading Company and the Baltimore and Ohio Railroad Company, dated September 1, 1904, said Carriers jointly maintained and operated a rail crossing at grade with appurtenant interlocking and signal facilities at Eastwicks, Philadelphia. Baltimore and Ohio employees performed the maintenance work while the interlocking and signal movements were controlled by three Reading towermen. The cost of maintenance and operation was divided between the companies, 70% to the Baltimore and Ohio and 30% to Reading.

One of the provisions of the 1904 Agreement was as follows:

"It is also agreed and distinctly understood that while the persons employed in the operation of the said switch and interlocking apparatus shall be deemed and taken to be in the employ of the Reading Company such persons shall only be employed after their selection shall have been approved by the Baltimore Company, and in case the service of any person so employed should at any time prove unsatisfactory to the Baltimore Company they shall forthwith be removed on notice so to do from the Baltimore Company."

In 1945, the two Carriers joined in applications to the Interstate Commerce Commission and the Public Utility Commission of Pennsylvania to eliminate the grade crossing control facilities at Eastwicks and for permission to control the interlocking and signal movements by means of a Baltimore and Ohio facility and employees on the drawbridge over the Schuylkill River. Approval was granted in 1946. The Pennsylvania Utility Commission made a finding that approval of "the application is necessary or proper for the service, accommodation, convenience or safety of the public." As of April 1, 1947, the two Carriers then entered into a new agreement whereby they obligated themselves to bear proportionately the expense of maintenance and operation on a different basis, however, than that which obtained under the 1904 agreement.

Enough has been said to demonstrate that the work performed by the Claimant employees at Eastwicks prior to April 1, 1947, existed by virtue of the Carriers' contract of September 1, 1904 with The Baltimore and Ohio Railroad Company. So long as that contract remained in effect the Organization was entitled to all of the work growing out of the same, which the Carrier had and which was within the Scope Rule of the Agreement between the Carrier and the Organization. But since the work existed only by virtue of the Carrier's contract with The Baltimore and Ohio, it ceased to exist when that contract came to an end. Had the Carrier's new contract with The Baltimore and Ohio provided that the interlocking and signal work should be supplied by the Carrier, the Claimants would have been entitled to it, but the Organization has no right to dictate the terms of the contract between the two railroad companies. See Awards 643, 2425, 4353 and 5878.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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.