

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway that:

1. The Carrier violated the terms of the Agreement between the parties when on October 27, 1952, it unilaterally and arbitrarily declared abolished the positions of first, second, third tricks and the swing position, No. 23, at "DW" Tower, Drew, Indiana, and concurrently transferred the duties and work of these positions to train dispatchers working in the train dispatcher's office at Peru, Indiana.
2. The positions of first, second, third tricks and No. 23 swing position at "DW" Tower shall be restored to their original status and the displaced employees returned to the positions in the order of their previous occupancy.
3. All employees improperly displaced as a result of this violative act shall be compensated for wages lost plus expenses incurred as provided in Rule 8 of the Agreement between the parties.
4. Other employees who were adversely affected by the violation shall be paid for wages lost.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of September 1, 1949 as to rates of pay and rules is in effect between the parties to this dispute.

The Pennsylvania Railroad tracks cross the tracks of the Chesapeake & Ohio at Drew, Indiana. Prior to October 27, 1952, all train movements over this crossing were handled by levermen working around the clock at "DW" Tower.

On October 20, 1952, Chief Dispatcher Riggle, Peru, Indiana, issued his Supplement M to Notice No. 55-1952 reading in part:

"Effective 3 P.M., Monday, October 27, 1952, the following changes will be made in my Notice No. 55-1952.

"Block and Train Order Office at Drew, Indiana, closed and positions of 1st, 2nd, 3rd trick and No. 23 Swing Operator at Drew, Indiana are abolished."

III—A sustaining award would infringe and nullify rights of the Dispatchers.

All data submitted have been discussed in conference or by correspondence with the employe representatives who have made ex parte submission in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose out of the action of the Carrier in discontinuing "D. W." Tower at Drew, Indiana, abolishing the telegrapher positions at that tower, and transferring the work of those positions to the train dispatcher's office at Peru, Indiana, to be performed by the train dispatchers. The relief asked is the restoration of the status quo.

It is quite apparent that the dispatchers are "involved" in this dispute within the meaning of Section 3, First (j) of the Railway Labor Act, which reads as follows:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the Carrier or Carriers involved in any dispute submitted to them."

The case is similar on its facts in all respects to that presented in **Order of Railroad Telegraphers vs. New Orleans, Texas and Mexico Railway Co.**, 229 F(2d) 59, Cert. denied 76 Sup. Ct. 548. The present case cannot be distinguished from the case cited as was done in Award 8264.

We think it would be improper to consider the merits of the claim until all the parties involved have received the notice required by law.

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That any decision on the merits must be deferred.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, Carrier, Order of Railroad Telegraphers, and American Train Dispatchers Association, as contemplated by Section 3, First (j) of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1958.