

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE TEXAS AND PACIFIC RAILWAY COMPANY**

DISPUTE.—"Claim of the General Committee, The Order of Railroad Telegraphers, Texas & Pacific Railway, that N. H. Hall was improperly displaced from his regularly assigned position at towerman at K. C. S. Crossing, Texarkana, Texas, on or about December 20, 1934, by C. R. Mitchell, and that Hall be reimbursed in an amount equal to the difference between what he earned after that date until he was assigned to the agency at Hosston, La., April 6, 1935, and what he would have earned during that time at K. C. S. Crossing Tower."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

There is in evidence an Agreement, bearing effective date April 1, 1928, between the parties governing the wages and working conditions of employees therein designated, to-wit:

"**ARTICLE 1. Scope.**—This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, and all exclusive agents except the following: * * *"

and, in the "Seniority and Promotion" rules, no distinction is made between the different employee designations.

Article 2 (h) of said Agreement is shown to have been amended, as of August 10, 1932, to read:

"(h) Except as is provided in Paragraph (i), when a regular position is abolished, the employee relieved shall have the privilege of asserting his seniority rights to any schedule position on the division, and will be required to select some position within thirty (30) days or go on the extra list; provided, that he shall not displace any employee who has been in the service over five (5) years. The employee displaced by him to assert his seniority to position held by any junior employee in point of service and so on until the youngest employee is relieved or displaced employee ceases to assert the privilege.

"In the event there are no employees holding regular positions with less than five (5) years seniority any one of the five (5) youngest regularly assigned employees may be displaced."

and, as of the same date (August 10, 1932), the parties are shown to have entered into a special Agreement, effective August 16, 1932, reading:

"It is agreed that the following nontelegraph levermen, assistant levermen, and towermen who were in the service on January 1, 1931, shall have priority right to positions held by them on that date and cannot be displaced by older employees;

"It is agreed, however, that should any of these men be displaced by reason of service being annulled they may displace others at Ft. Worth,

Dallas, and Texarkana, who are junior in service. This to be done in line with Article 2 (h) of the Agreement.

"Ft. Worth.—R. Landis, J. M. Hendrix, E. Phillips, W. E. Ferguson. *Dallas.*—J. W. Mason, J. B. Dinwiddie, C. R. Mitchell. *Texarkana.*—D. Orr, R. A. Kirby, E. E. Kirby, W. E. Clark, J. J. Campbell, W. W. Terry.

(Signed) H. D. EARL,
General Manager.

(Signed) W. H. TOBIN,
Assistant General Manager.

(Signed) C. T. BOTVIDSON,
General Chairman, Order of Railroad Telegraphers.

As of December 12, 1934, non-telegraph levermen-towerman service at Dallas was "annulled"; whereupon Employee J. W. Mason (Seniority date Nov. 1, 1909) placed himself on the extra board; on December 20, 1934, Employee J. B. Dinwiddie (Seniority date October 1, 1916) displaced one Walthall, his junior, on a position at Texarkana, which position had been acquired by Walthall subsequent to Jan. 1, 1931; and on December 27, 1934, Employee C. R. Mitchell (Seniority date June 5, 1918) displaced one N. H. Hall (a telegrapher having seniority date January 9, 1909) on a non-telegraph leverman position at Texarkana, which Telegrapher Hall acquired November 7, 1932, filling a permanent vacancy by bulletin.

It is the latter mentioned displacement that became subject of the dispute herein. The carrier represents that said displacement (Non-Telegrapher Mitchell over Telegrapher Hall) was permissible under the circumstances and in keeping with the "priority right" given Employee Mitchell under the terms of the Special Agreement of August 10, 1932; whereas, petitioner makes the contrary claim that Employee Hall, being senior to Employee Mitchell, could not be rightfully displaced by Mitchell under the terms of said Special Agreement.

The parties thus being in discord as to the intent and proper application of the Special Agreement entered into August 10, 1932, to the facts and circumstances herein presented, the Third Division must consider the letter of said Special Agreement and accordingly finds:

(1) That Employee Mitchell had "priority right" only to the particular position held by him on January 1, 1931.

(2) That he could exercise displacement rights, under the terms of Schedule Rule, Article 2 (h) and the Special Agreement of August 10, 1932, only to positions occupied by employees his junior in point of seniority.

AWARD

Employee Hall shall be compensated in an amount equal to the difference between that which he would have earned on position of leverman-towerman at Texarkana in the period December 27, 1934, to April 6, 1935, and that which he did or would have earned on other positions to which eligible in an exercise of his seniority during the same period.

By Order of Third Division:

Attest:

NATIONAL RAILROAD ADJUSTMENT BOARD.

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 3rd day of December 1935.