

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of the Northwestern Pacific Railroad that the positions of drawbridgetender-leverman at Wingo, Black Point, McNear, and Eureka Slough shall be included within the provisions of the schedule agreement with that company."

STATEMENT OF FACTS.—The employees submitted ex parte the following statement of facts:

"At the points named in the Statement of Claim, drawbridgetender-levermen are required to operate drawbridges, derailing devices incident thereto, control and operate signals with interlocking switches by means of levers from a central point."

The carrier's statement of facts was incorporated in the statement of its position as set forth below.

An agreement between the parties bearing effective date of July 16, 1927 (with changes as of May 1, 1936), was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute are as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employees were submitted as follows:

"This claim is being prosecuted under Rule 1 of the agreement in effect between the Northwestern Pacific Railroad Company and its employees represented by The Order of Railroad Telegraphers, effective July 16th, 1927:

"RULE 1—SCOPE

"This schedule will govern the employment and compensation of agents (except as excluded in Rule 26), telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, and levermen, hereinafter referred to as employees, and will supersede all previous schedules, agreements, and rulings thereon."

"The dispute between the Carrier and the Committee involves the meaning of the word 'levermen' in Rule 1 as quoted above, as applied to the men occupying the positions at the points named in the Statement of Claim. The Committee contends that the employees operating the drawbridges mentioned in the Statement of Claim are levermen as defined and designated in Interpretation No. 1 to Decision No. 757 and Interpretation No. 1 to Decision No. 2025 of the United States Railroad Labor Board, these Decisions being issued on April 15th, 1924:

"DECISION

"The Railroad Labor Board decides upon the questions in dispute under the hereinafter specified rules of Decisions Nos. 757 and 2025, as follows:

tween the Organization and the Carrier. The Organization does not make the claim that the positions are now included in the Agreement.

"On November 12, 1935, the Carrier by Agreement recognized Brotherhood of Maintenance of Way Employees as representing employees in Maintenance of Way and Structures Department, including drawbridge tenders, on Northwestern Pacific Railroad; Carrier's Exhibits C, D, E, and F, attached hereto.

"In the Carrier's negotiations with the Organization, the Carrier denied the request of the employees."

OPINION OF BOARD.—As was held in Award 384, Docket TE-392, rendered by this Division February 23, 1937, where bridge tenders are required to operate drawbridges and the signals and derailing devices incident thereto by means of levers from a central point, these employees are "levermen" within the scope rule of the Telegraphers' Agreement. Since, in that docket, the positions involving the performance by bridge tenders of the work of levermen at La Salle and Ottawa were established subsequent to the negotiation of the prevailing agreement, and since nothing in that agreement expressly restricted its effective scope, the carrier was directed to classify the employees performing this work as levermen, and then accord to them the protection of the provisions of the Telegraphers' Agreement. In the instant case, however, despite the fact that the work performed by the bridge tenders at Wingo, Black Point, McNear, and Eureka Slough is likewise found to be that of levermen, the request of the employees cannot be granted without alteration by this Board of the scope of the agreement between the parties, which is beyond the bounds of its authority. The positions here involved were in existence prior to the negotiation of the prevailing agreement, and might well have been covered by that agreement, but in point of fact they were not included within its terms. The Telegraphers' Agreement operative on this property contains not only the scope rule, but a list of the positions and their rates of pay as fixed by the parties. Since the actual scope of an agreement can be made as broad or as narrow as the parties may stipulate, the positions thus listed must be taken as the concrete expression of the carrier and its employees with respect to the effective scope of the agreement. It is not within the authority of this Board to alter the terms of an agreement either by including positions not covered thereby or by excluding positions embraced therein. The end here sought by the employees can properly be achieved only through the processes of negotiation. Compare Award 383, Docket TE-379, rendered by this Division February 19, 1937.

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 work performed by the bridge tenders at Wingo, Black Point, McNear, and Eureka Slough is that of levermen, but that the inclusion of the positions at these points within the provisions of the prevailing agreement would necessitate an alteration of the effective scope of that agreement which can properly be achieved only through negotiation of the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1937.