

Award No. 553
Docket No. TE-538

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

EMPLOYES' STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the carrier in requiring or permitting employes other than covered by the Telegraphers' schedule agreement to perform the recognized duties of towermen or levermen in the tower at Ponca City, Oklahoma, is in violation of the Telegraphers' agreement; and that while such service is required to be performed it shall be performed by employes covered by the Telegraphers' agreement."

CARRIER'S STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway that towermen should be assigned to operate the interlocking facility at Ponca City, Oklahoma."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 21, 1932, at Ponca City, Oklahoma, there was in existence three towermen positions coming under the Scope of the Telegraphers' schedule and represented by the Order of Railroad Telegraphers. Effective May 21, 1932, the towermen were taken off and thereafter the interlocking facilities were operated by trainmen. These interlocking facilities govern the crossovers, switching, etc., the Atchison, Topeka and Santa Fe Railway Company and the Chicago, Rock Island & Pacific Railway Company; the former being the senior line."

CARRIER'S STATEMENT OF FACTS: "Effective May 21, 1932, the towermen positions at Ponca City, Oklahoma, were taken off. On and after that date the signals have been set as follows:

Normally signals are in proceed position for AT&SF trains with signals in stop position and derails in place on Rock Island approaches. AT&SF trainmen do not operate the levers at this tower but it is necessary for Rock Island trainmen to operate same prior to and after using the crossing."

POSITION OF EMPLOYES: "The Scope of the Telegraphers' Schedule reads:

"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

"Since May 21, 1932, no Santa Fe employe has been required or permitted to operate this interlocking plant. The five mechanical levers which prior to May 21, 1932, were used to operate the derails (and the two spares, as well) and the three signal levers have been boarded up and made unserviceable.

"The principle involved in this case has been definitely and specifically disposed of by the United States Railroad Labor Board in its Docket No. 4363, Decision 3926, a copy of which is attached hereto as Exhibit 'A.'

"It is the position of the carrier that there is no schedule rule or other obligation, or necessity, requiring the carrier to maintain the three unnecessary positions of towermen in the interlocking plant near Ponca City. In addition the carrier desires to point out that this grievance has no standing because it was not presented within thirty (30) days from the date the towermen's positions were abolished, as required by Section (i), Article V, of the Telegraphers' Schedule, reading:

'Any grievance to be considered must be presented within thirty (30) days of date alleged to have occurred.'

OPINION OF BOARD: In this claim of the General Committee of the Order of Railroad Telegraphers that the Carrier is violating the Telegraphers' agreement in requiring or permitting employes other than covered by the agreement to perform duties of Towermen or Levermen in the tower at Ponca City, Oklahoma, the Carrier contends that there is no schedule rule or other obligation or necessity to maintain three alleged unnecessary positions in the interlocking plant, and that this grievance has no standing because it was not presented within thirty days from the date the towermen's positions were abolished, in accordance with Section (i), Article V of the Telegraphers' Schedule.

With respect to the contention of the Carrier as to the application of Section (i) of Article V of the Telegraphers' Schedule which places a limitation of thirty days for the presentation of grievances, the Board submits that this claim does not represent a grievance in the sense in which the term is used in the Schedule, this claim is made by the General Committee of the Order of Railroad Telegraphers, one of two parties to an agreement or schedule of rules and regulations between the employes and the carrier, and is a contention of one of the principles of an agreement with the other over the application of rules, regulations and rates of pay or other conditions whose proper interpretation and application is a matter of mutual or joint responsibilities.

Under these conditions there are no limitations that can be applied to discussions of the proper interpretation and application of rules, regulations, rates of pay or conditions which they involve, these are subjects to be determined in joint conferences or negotiations, or, failing in this, to be determined in the manner provided, and in this instant case the Board rules that Section (i), Article V of the Schedule does not apply and this case is properly before this Third Division of the National Railroad Adjustment Board.

Considering the further submission of the Carrier that there is no schedule rule or other obligation or necessity of maintaining positions of towermen in the interlocking plant near Ponca City, the General Committee contends that prior to May 21, 1932, there were three towermen at the location indicated coming under the scope of the Telegraphers' schedule; that effective May 21, 1932, the towermen were taken off and the interlocking system and facilities were operated by trainmen, not represented in the Telegraphers' agreement and in violation of the terms of that agreement.

Each of the parties in this dispute have submitted various awards of this and other Divisions of the National Railroad Adjustment Board, various rulings and decisions of the United States Railroad Labor Board, decisions and awards of Railroad Boards of Adjustment, and supplements and interpretations to General Order No. 27 in support of their respective contentions.

Referee Arthur M. Millard, who sat with the Division, as a member, when Award No. 496 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of October, 1937.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 553,
DOCKET No. TE-538**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: The Atchison, Topeka and Santa Fe Railway Company (Eastern Lines)

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In reviewing the conditions subsequent to the rendering and promulgation of the award rendered in this claim, as outlined in a review of the correspondence between and from the parties at issue, it is not the prerogative nor intention of this Board to supplement Award No. 553, dated December 21, 1937, by passing on a condition taking place in January 1938, as to do so would be exceeding its authority. However the Board submits that while the duties of the Towermen and Levermen, which were required or permitted by the Carrier to be performed by employees other than those covered by the Telegraphers' agreement, were rendered in the Tower at Ponca City, both at the time the claim was made and the Award was rendered, the location in which the violation of the agreement took place was of secondary importance considering the fact that the violation did take place, and the condition or conditions on which the claim was based, and on which the award was rendered, was the recognized duties of towermen and levermen which were performed by employees other than those covered by the Telegraphers' Schedule.

In view of this outline, it is the ruling of the Board that the only proper meaning and intent that can be placed on Award No. 553, as defined in the opinion of the Board and the findings thereof, is that while such work or service as is indicated is required to be performed at Ponca City, it shall be performed by and restored to employees covered by the Telegraphers' agreement, and the rate applied in accordance with the wage scale and governing rules of the existing agreement, until such time as action is taken to change the conditions or reclassify the positions in dispute in accordance with the requirements of the agreement existing between the parties.

Referee Arthur M. Millard, who sat with the Division, as a member, when Award No. 553 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of July, 1938.