

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway (a) that the work of manipulating the plant at the intersection of the C. St. P. M. & O. Railway and C. R. I. & P. Railway tracks at Sibley, Iowa, is work coming within the scope of the Telegraphers' Agreement, (b) that sufficient positions to meet the needs of the service at that point shall be bulletined and filled in accordance with the governing rules of said agreement, and (c) that extra employes available and entitled to perform this service at Sibley, since request was made by the telegraphers' committee in July, 1938, that employes from the telegraphers' seniority roster be used to man this plant, be paid the difference between what they have earned since that time and what they would have earned had they been placed at Sibley tower."

EMPLOYES' STATEMENT OF FACTS: "There is in evidence an agreement between the Chicago, Rock Island and Pacific Railway and the Order of Railroad Telegraphers covering rules on working conditions for those employes in the station tower and telegraph service enumerated in the scope rule thereof, and a schedule of wages for positions listed in the wage scale, copies of which have been supplied to the Board.

"On page 32 of the agreement will be found Sibley agent-telegraph and a second telegraph positions, but no tower positions are listed in this schedule for the reason that when the current agreement was consummated January 1, 1928, the Sibley tower was under control of the C. St. P. M. & O. Railway and manned by their employes.

"About November 22nd, 1927, according to the carriers advice, July 19, 1938, the C. St. P. M. & O., discontinued the tower positions and the Rock Island took over the handling of the tower with employes not covered by the telegraphers' agreement, and the telegraphers' committee was not notified of the creation of these new positions."

POSITION OF EMPLOYES: "As stated in the Facts on this question, prior to November 22nd, 1927, there were three tower positions in existence at Sibley, Iowa, controlled and regulated by the C. St. P. M. & O. Railway Company, for the purpose of protecting trains at a crossing of the C. R. I. & P. and C. St. P. M. & O. These three positions were incorporated in the telegraphers' agreement with the C. St. P. M. & O.

"At the time change of control of the tower work was transferred to the Rock Island, November 22nd, 1927, their telegraphers' committee was in negotiations for the purpose of revising the agreement between us, and it

agreement, but omitting the name of other coal chutes already in existence, prevented that Division from extending the operation of the contract to the omitted coal chutes.

"Without any language in the contract to support a monopoly on the moving of levers, particularly an operation which existed prior to the agreement of January 1928, and is not mentioned in the schedule, employees of the general class covered by the telegraphers' agreement have no monopoly on this work and the claim should be denied."

OPINION OF BOARD: This case is controlled by the decision of this Board in Award 1290 unless the following contention of the General Committee marks a valid distinction between this case and that. To put the Committee's contention bluntly it is charged that, in negotiating the agreement, effective January 1, 1928, the Carrier fraudulently concealed the fact that there had been a radical change in the method of operating the levers and signals at the Sibley crossings; that the Carrier concealed the fact that trainmen of the Rock Island were manipulating the levers subsequent to October 1927.

There is no evidence in the record to sustain the charge of fraudulent concealment inducing the omission of the positions of towermen or levermen at Sibley in the schedule of positions coming within the scope of the agreement effective January 1, 1928. At most, there might have been a mutual mistake in not including such positions in the schedule of that agreement.

The purport of the General Committee's agreement is that the agreement should now be reformed so as to include such positions. In making the agreement the General Committee appeals to equity and good conscience. There was a time when the equitable doctrine of reformation might have been urged—whether it would have been applied is now beside the question. Be that as it may, the General Committee cannot now be heard to urge reformation of the agreement upon the basis of equitable considerations. The situation at Sibley was known to the General Chairman as early as June 16, 1930, yet the present claim was not initiated until July 18, 1938. Whatever equitable right the General Committee might once have urged is now barred by laches. In so holding we are not running counter to the numerous decisions of this Division to the effect that rights may not be established or lost by long continued violation of an agreement by a party to it. There has been no violation of the agreement as made and as it now stands. The Board will not entertain an application to reform it after so great a lapse of time. Award 1290 is controlling.

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 there was no violation of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1941.