

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Norris C. Bakke, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**PACIFIC ELECTRIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Pacific Electric Railway Company that the action of the carrier in permitting or requiring train service employes to perform tower service at Wise Tower, is in violation of Article 1 of the Agreement in effect between the parties to this dispute.

**EMPLOYES' STATEMENT OF FACTS:** At crossing of the Pacific Electric Railway and the A. T. & S. F. Railroad between Los Angeles and the Harbor district at location known as Wise Tower, a manually operated arrangement of handling tower facilities exists. The Tower is normally lined up for passage of A. T. & S. F. trains over the crossing. When Pacific Electric trains desire to use this crossing, a member of the train crew unlocks the tower building, enters the tower and manipulates the levers manually to deprive the A. T. & S. F. trains of clear passage over the crossing and permit such clear passage over the crossing to Pacific Electric trains. Personal check of the method of operation indicates that there are times when Pacific Electric trains are switching at Wise Tower and A. T. & S. F. trains desire to use the crossing, the Pacific Electric train crew operates the manual levers for the purpose of denying the Pacific Electric trains the use of crossing, permitting the A. T. & S. F. trains to use the crossing and after the A. T. & S. F. trains have used the crossing, restore the privilege to Pacific Electric trains, subsequently leaving the limits of the plant after restoring the plant to its normal condition of permitting the A. T. & S. F. trains to have unobstructed passage over the crossing.

**POSITION OF EMPLOYES:** Committee contends that the agreement in effect on this property between the Carrier and the Order of Railroad Telegraphers effective September 16, 1934, stipulates in Article 1, commonly known as the Scope Rule or Article, that operation of towers, irrespective as to their method of operation in relation to electric, pneumatic electric or manual, is restricted to employes represented by this Organization, such employes coming within the purview of the agreement in effect on the property between the two parties to this dispute and with the exception of Wise Tower and positions at the foot of the Viaduct, Sixth and San Pedro Streets, Los Angeles, all such positions being contained in the wage scale which is a part of the agreement, such wage scale being dated April 27, 1935.

The positions at the foot of the Viaduct, Sixth and San Pedro Streets, Los Angeles, have been established for a period of years and filled by employes not represented by this Organization until on or about December 1, 1937 when the positions were taken over by the Order of Railroad Telegraphers. This action on the part of the Organization releasing the positions, the Brotherhood of Railroad Trainmen, and the action of the Carrier in agree-

that there was no towerman assigned to Wise Tower was mentioned and that this was the reason for not including Wise in list of towers in the agreement.

It is the Carrier's opinion that this present matter is parallel to that covered by National Railroad Adjustment Board Award No. 389, Docket No. TE-312, Third Division, in which case the Telegraphers were denied jurisdiction over certain drawbridge lever-men positions on Northwestern Pacific Railroad Company because these positions have always been filled by Maintenance of Way employees; and, further, that these positions had never been negotiated into the Telegraphers' Agreement.

This action of the Board was again sustained in National Railroad Adjustment Board Award No. 1116, Docket No. MW-1016, Third Division, wherein it appeared that certain coal chute positions on the Central of Georgia Railway had always been filled by Mechanical Department employees and Brotherhood of Maintenance of Way employees were denied jurisdiction because of the fact that the positions had never been negotiated into the agreement.

A very recent Award handed down by the National Railroad Adjustment Board, Third Division Award 1567, Docket TE-1406, denied the claim of the Telegraphers for the right to the work of operating signals and switches from a central point at Abilene, Kansas, and Scott City, Kansas, on The Atchison, Topeka and Santa Fe Railway. This for the reason that this work had been handled by train crews continuously since the installation of the plants. It was further held that the Board was without any authority to make a new agreement for the parties by including therein work, or positions, which the parties had not included in their agreements.

This most certainly appears to be the position in the instant case.

In view of the terms of the agreement and the controlling Awards herein cited, the Board is requested to deny the claim because no violation of the existing agreement has been shown.

**OPINION OF BOARD:** As appears from the statement of facts of both sides to this controversy an agreement was entered into between them on September 16, 1934. A part of this agreement contains a schedule of rates of pay for employees at various points on the Carrier including a list of the Towers coming within the scope of the agreement. The Wise Tower is not included. On April 27, 1935, a supplemental agreement was entered into which covers the same list of towers. Again Wise Tower was not included.

Almost five years were allowed to elapse before any question was raised by the employees relative to the operation at Wise Tower. Such a long period of acquiescence can only be construed to mean a waiver of the violation of the agreement, if any there was, which we do not concede, or an agreed upon interpretation which we think is what appears here.

There is no suggestion of concealment of anything, and as a matter of fact there could be none because Mr. Lawrence McKoane, the Local Chairman of the employees was entirely familiar with the operation of Wise Tower, and he was one of the men that participated in the draft of the agreement involved.

We have carefully studied the previous awards that touch on the question before us and freely concede that language in a number of them supports the position contended for by the employees, but there is only one award, viz., 1567 which approximates a parallel situation to the one at hand, the only distinction which employees point out is that in 1567 the work in question had never been performed by anyone covered by the Telegraphers' Agreement. While this distinction might become important if the carrier in the instant case had attempted to abolish the position of tower man a short time before, it loses that significance when the record shows as it does, that the services of

a tower man had been dispensed with four years before, and the services performed by trainmen (as in 1567) for that period of time without objection. See also Award No. 1606.

For the reasons indicated, the Board is of the opinion that because of the agreed upon interpretation of the contract no violation is shown, and the claim must be denied.

**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 Article 1 of the Agreement was not violated and the claim is denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1942.