

**Award No. 5291**

**Docket No. TE-5384**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Angus Munro, Referee**

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the Central Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines;

- (1) that the first, second and third towermen at El Pinal Tower, Western Division, are improperly classified;
- (2) that these employees who are required to handle communication service with the train dispatcher affecting the movement of trains be reclassified in accordance with Rule 2; and
- (3) that the hourly rates of the employees filling these three positions be increased equal to that paid telegrapher-clerk-towermen on the Western Division effective May 14, 1945, in accordance with the provisions of Rule 2(a), Telegraphers' Agreement.

**EMPLOYES' STATEMENT OF FACTS:** 1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of December 1, 1944, which agreement (hereinafter referred to as the agreement) was in effect on the dates involved in the instant claim. A copy of the agreement is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains a tower shown on the timetable as Tower No. 4 called El Pinal Tower, located 1.4 miles east of Stockton station, this tower being operated on a 24-hour basis, manned by three employees now classified as Towermen. The rates of pay are as shown below:

	Aug. 1 1945	Jan. 1 1946	May 22 1946	Sept. 1 1947	Oct. 1 1948	Sept. 1 1949
First Towerman	.8775	\$1.0375	\$1.0625	\$1.2175	\$1.2875	\$1.5325
Second Towerman	.86	1.02	1.0450	1.20	1.27	1.51
Third Towerman	.86	1.02	1.0450	1.20	1.27	1.51

3. For many years, there has been located in El Pinal Tower a regular dispatcher's telephone circuit and a communication telephone circuit, both connected to telephone jacks so that one telephone instrument could be used on either circuit.

Stockton during the period April 14 to 20, 1946, and there is also attached as Exhibit "G" similar tabulation for the period June 14 to 20, inclusive, 1950.

It will be noted from a review of Exhibits "F" and "G" that these instructions consisted of occasional requests to hold trains within the limits of the interlocking plant or to cross trains over from one Southern Pacific main track to the other by means of one or the other of the two crossovers within the plant. The action required of the towermen in complying with the instructions was to operate signals and switches involved, which are remotely controlled from the tower. In other words, the towerman was merely requested to perform the duties of his position, namely, operate the interlocking plant controlled from the tower.

In handling this request on the property, the petitioner has laid stress on the fact that the towerman receives instructions from the train dispatcher. The carrier asserts that the duties of the towerman are to operate the interlocking plant controlled by the tower, and that the nature of his duties are the same regardless of whether he receives instructions from a train dispatcher or another representative of the carrier such as a yardmaster. The towerman does not work with the dispatcher in the same manner as a telegrapher, because the authority of interlocking signals controlled by the towerman is restricted to the limits of the interlocking plant, and the towermen do not perform the principal duties of a telegrapher such as copying train orders, issuing clearances and making "OS" reports. In other words, the towermen at El Pinal tower do not handle orders granting trains authority for movements outside the limits of the interlocking plant, but perform only such duties as are normally performed by towermen.

The carrier desires to reiterate that no rule of the current agreement supports the instant request.

### CONCLUSION

The carrier asserts that the claim in this docket involves a request for change in the current agreement, which does not come within the jurisdiction of this Division, and therefore should be dismissed; however, if the Division elects to consider the request, the request being without merit should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record reveals a short time prior to August 1, 1945, Carrier installed at the point where Petitioner performed the duties of a Towerman a dial telephone. This instrument was in addition to a telephone which by means of a mechanical contrivance could be connected to either the communication circuit or the train dispatcher's circuit.

The gist of the claim herein is that on and subsequent to the installation of the first above-mentioned telephone the work of Petitioner expanded from an occasional emergency call from the train dispatcher to a sufficient number of calls to control, direct and order train movements so as to cause Petitioner's position to be comparable to that of Telegrapher-Clerk-Towerman and hence within the terms of Rule 2, Sec. (b) of the Schedule.

Accordingly we ask the question: was a new position created at the point Petitioner performed his duties? The record has been carefully reviewed and while the type of work wherein the telephone was employed may not have changed, the volume did change to that degree where Petitioner did a substantial and material amount of controlling, directing and ordering of train movements. It is accordingly ordered by the Board that parts 1 and 2 of the claim herein be answered in the affirmative.

By reason of Petitioner not having discharged his burden of establishing clearly and unmistakably that such newly created job is comparable to

the positions set out and described in part 3 of the claim herein and at the locations referred to therein, the Board accordingly directs that said portion of the claim be remanded to the property and directs the parties to confer and negotiate with reference to the establishment of a proper job classification and the wage rate it should have in accordance with Rule 2, Section (b) of the Schedule. In the event the parties fail to determine such matters, the case may be referred to this Board together with further information for final determination.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

#### AWARD

Part (1) of claim sustained.

Part (2) of claim sustained.

Part (3) of claim remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.