

Award No. 10206

Docket No. TE-8472

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, that:

1. The Carrier violated and continues to violate the agreement between the parties when it refuses to pay an additional allowance on the three positions of Operator-Leverman at Tower B-17, Bensenville, Illinois, in accordance with Rule 2(c), when it installs remote control devices resulting in additional duties and responsibilities; and
2. That Carrier be required to pay an additional allowance on each of the three positions, effective October 1, 1953, in accordance with Rule 2(c), on the same bases that previous allowances were made on other positions under the terms of this same rule.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are by reference thereto made a part of this submission.

This claim arises out of Carrier's refusal to pay an additional allowance to the occupants of three Operator-Leverman positions in accordance with the provisions of Rule 2(c) in an amount equal to rate adjustments made at other locations commensurate with the additional duties and responsibilities.

Tower B-17 is located at Bensenville, Illinois, seventeen miles west of Union Station, Chicago, Illinois. It (the tower) is within the commuter area of metropolitan Chicago, and in addition to handling commuter train traffic, is also on the main line extending west to Omaha.

Tower B-17, Bensenville, Illinois, hereinafter referred to as Tower B-17, is situated at the Junction point with the C&M (Chicago Terminal) and the D&I (Dubuque and Illinois) Divisions on double track. Two miles south of this junction point, the Chicago & Northwestern Railroad crosses the Milwaukee at the site of the old abandoned tower "B", the functions of which have been incorporated into Tower B-17 and remotely controlled by that facility.

OPINION OF BOARD: Carrier installed remote control devices at Tower B-17, an interlocking plant at Bensenville, Illinois. The claim is for an additional allowance on three positions of Operator Leverman at Tower B-17 on the basis of "additional duties and responsibilities." Claimants ask that the additional allowance be effective as of October 1, 1953.

Rule 2(c) provides:

"When employees are regularly required to handle remote or centralized traffic control device, if additional duties and responsibilities of the position result, they shall be paid an additional allowance to cover such service predicated upon the extent of the increased duties and responsibilities."

The Organization asserts that five additional remotely controlled switches substantially increased the movements in the territory affected and resulted in an increase in the duties and responsibilities of the claimants.

Carrier asserts that the claimants duties and responsibilities were actually lessened. They contend that any increase by reason of the addition of five switches to the remote control panel was offset by a reduction in the number of levers in the mechanical interlocking machine from 49 to 47; 29 of these being made power operative. They also contend that the installation of an automatic heating unit and a revision of the Rules practically eliminating train order handling and delivery by Operator-Levermen reduced claimant's duties and responsibilities.

Each party filed six submissions with this Board. It is not necessary to answer all the points raised to properly resolve this issue.

Organization in its fourth submission attached an exhibit from three operator-levermen which purported to give specific information as to the increase in duties and responsibilities of the claimants which resulted from the changes made at Tower B-17. We must hold that this affidavit submitted for the first time almost three years after Carrier's declination on the property is not properly before this Board.

Genuine efforts should be made to settle disputes on the property, to avoid cluttering the calendar of this Board with cases that could have been settled if the full facts had been brought out and considered. Award 8324. The exhibit is inadmissible before this Board. Award 9552. It cannot be considered as evidence in our deliberations even for the purpose of determining whether a remand is proper.

Carrier stated inter alia in its submission when faced with the organizations untimely exhibit that the information contained in it had never been furnished to the Carrier, was never in the possession of the Carrier, and was entirely new to Carrier. Organization attempts to show that this language is at variance with the Carrier's prior statements that investigations had been made to determine if additional duties and responsibilities were being performed as a result of the changes made at Tower B-17. We believe that Carrier's reply was limited to the new evidence presented by organization for the first time in its fourth submission and not to a lack of knowledge of its own operation. We do not believe that the Carrier's reply to the organization's fourth submission has any other meaning.

We cannot subscribe to the heavy reliance which Carrier placed on "physical effort" in the determination of duties and responsibilities. Never-

theless, we find no evidence that the Carrier acted in bad faith. It acted after investigation, based on sufficient evidence in resolving the question of "additional duties and responsibilities." The Organization has failed to produce any evidence to support its allegation that "additional duties and responsibilities" resulted from the changes at Tower B-17. We fail to see that the organization has stated a case upon which relief can be granted. The burden of proof is on the party making the claim. The organization has failed to meet its burden.

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.

AWARD

Motion to remand denied. Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1961.