Award No. 11398
Docket No. TE-9970

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MONON RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Monon Railroad that:

1. Carrier violated and continues to violate the agreement between the parties when, effective July 10, 1956, it declared abolished the two positions of telegrapher-towerman at PM Tower, Michigan City, Indiana and without mutual agreement removed the work of the positions from the agreement and transferred it to employes not covered by the agreement.

2. Carrier shall compensate J. E. Daniels, regularly assigned incumbent of the first shift position, one day's pay on each date suspended from and deprived of the work of his position commencing July 10, 1956 continuing until the date he left the service of the Carrier, thereafter compensate the senior idle employe on the seniority district (extra in preference) one day's pay on each work day of the position until the violation is corrected.

3. Carrier shall compensate R. L. Rafferty, regularly assigned incumbent of the second shift position, one day's pay on each date suspended from and deprived of the work of his position commencing July 10, 1956 continuing until the date he left the service of the Carrier, thereafter compensate the senior idle employe on the seniority district (extra in preference) one day's pay on each work day of the position until the violation is corrected.

4. Carrier shall compensate J. A. Carver, regular relief operator assigned to rest day relief on the two positions, a day's pay on each date suspended from and deprived of the work on these two positions commencing July 10, 1956 continuing until the date he left the service of the Carrier, thereafter compensate the senior idle employe on the seniority district, (extra in preference) one day's pay on each rest day of the two positions until the violation is corrected.

5. Carrier shall compensate all other employes adversely affected for any wage loss suffered; and

6. A joint check of the Carrier's records shall be made to determine the beneficial claimants.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Several rules of the agreement are involved and will be introduced and discussed during the course of this submission. Rule 1, Scope, is primarily the rule violated and particularly paragraph (b) of that rule, which reads:

> "(b) Unless otherwise agreed to by the authorized representative of the Carrier and the duly accredited representative of the Organization, positions and/or work referred to in this agreement belongs to the employes covered thereby and no work of the classifications enumerated in paragraph (a) of this rule shall be removed therefrom except by mutual agreement."

"PM" Tower is located on the Michigan City Branch, Main Line of the Carrier at Michigan City, Indiana, about two miles south of the Monon freight house and adjacent to the Monon roundhouse. Employes under the Telegraphers' Agreement have performed the work at this location for many years. Positions at "PM" Tower have been listed in the wage scales of all the agreements between the parties. The current agreement, effective May 1, 1953, lists two positions of telegrapher-towerman at "PM" Tower. At the time cause for this claim arose, the assigned hours of the first shift position were 7:00 A. M. to 3:00 P. M. seven days per week with Saturdays and Sundays as rest days; assigned hours of the second shift position 3:00 P. M. to 11:00 P. M., with Mondays and Tuesdays as rest days. J. E. Daniel was regularly assigned to the first shift, R. L. Rafferty was regularly assigned to the second shift and J. A. Carver was regularly assigned to the relief position which afforded rest day relief at "PM" Tower and worked the fifth day at another location.

The work performed by the occupants of these positions at "PM" Tower was the operation of a manual interlocking plant to control the movements of both Monon and C&O (PM District) trains over the crossing at that point, this necessitated some communication with the train dispatcher in connection with these movements; in addition to the interlocking operation all train orders and clearances were handled for outbound trains; all trains were "OS" 'ed to the dispatcher; all messages and reports to and from the adjacent round house were handled; the exchange of messages between the C&O and the Monon were handled in fair volume as this was a car interchange point between the two carriers. Also the occupants of the telegrapher positions at "PM" Tower performed all the work in connection with this interchange of cars, checking the cars on the tracks and making up and forwarding all necessary reports.

Under date of July 6, 1956 the Carrier issued the following General Order:

"The Monon Railroad

General Superintendent's Office

Lafayette, Indiana

July 6, 1956

GENERAL ORDER NO. 955

All Train and Enginemen:

Award Numbers

FIRST DIVISION

13058	15778
13679	15779
15300	16201
15769	16242
15772	

It is noted also that claim presented in behalf of named claimants is for one day's pay each day until leaving the service. We understand that proper penalty in any event should not exceed actual loss resulting from the action here questioned.

Some of the Third Division Awards supporting this view are —

Award Numbers

3964	6818
6391	7211
6417	7212
6528	7241
6529	7309

In conclusion the Carrier submits that the claim should be denied — first account employes' failure to "institute proceedings" before the Board within the nine month time limit as provided in paragraph (c) of Article V of Agreement dated August 21, 1954; however, should the Bord not so hold, the claim should be denied as being without merit or rule support.

It is hereby affirmed that all information and data herein set forth has been furnished to, discussed with or known to the representatives of the Organization.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier operates a terminal at Michigan City, Indiana. The Carrier had entered into an agreement with the C & O Railroad allowing the C & O to cross Carrier's line at this point. In 1956 the C & O installed a new automatic interlocking signal plant at this crossing. The telegrapher-towermen positions at the crossing were abolished. The Petitioner contends that the positions could not be abolished. They further contend that the agreement with the C & O cannot be considered because a copy was not submitted as required by Circular No. 1. The Petitioner did not deny the existence of the Agreement, therefore it was not necessary for the Carrier to prove the terms and existence of the Agreement.

The work involved herein existed for the Claimants because of the contract with the C & O.

The C & O exercised their right and withdrew the work. Awards 6210, 5878 and 3450 are in accord.

For the foregoing reason we find the Agreement was not violated.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May 1963.