

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
WABASH RAILROAD COMPANY**

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

1. The Carrier violated the parties' agreement at Detroit, Michigan, when, on November 19, 1957, it declared abolished the position of Telegrapher in "MX" Telegraph Office, without in fact abolishing the work thereof, installed a mechanical telegraph machine (Facsimile) in "MX" Office, and assigned the Operation thereof to an employe outside the Agreement; who performs the communications work formerly performed by the occupant of the abolished position.

2. The Carrier shall, so long as the violation continues, compensate each and every employe who, because of the Carrier's wrongful act, have been displaced or otherwise adversely affected, for all wages lost and for any expenses incurred as a result of the Carrier's violative act. Names of Claimants and amounts to be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

At Page 23 of this Agreement (Rule 27 — Wage Scale) is, among other positions, listed the position existing at Detroit, Michigan, figuring in this dispute. The listing is:

Location	Title	Rate Per Hour
Detroit "MX"	T.	\$1.94½

The rate of the position has been increased as a result of National Collective bargaining and now stands at \$2.43.

In an agreement between these same parties effective August 1, 1919, Page 12 (Rule 26 — Wage Scale), this same position is listed as follows:

A United States Federal District Court, in holding void Award No. 318 of the National Railroad Adjustment Board, Fourth Division, in a decision reported in 70 Federal Supplement 914, stated:

"* * * the statement of claim itself is indefinite. It does not contain the names of the two yardmen over whom the dispute arose. Extraneous evidence would have to be adduced to give the award meaning."

The United States Circuit Court, Seventh Circuit in affirming the action of the District Court in the case reported in 70 Federal Supplement 914, stated:

"It is our view that the award and order are too uncertain and indefinite to furnish the basis for the instant action."

See 166 F(2d) 326.

The alleged claims presented in the Committee's ex parte Statement of Claim are not supported by the rules of the agreement and should be dismissed, and if not dismissed, denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization rested its case upon the outcome of Docket TE-10534. The decision in that case was that the Board has no jurisdiction over the dispute. See Award No. 11764, which is controlling here.

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

That the parties waived oral hearing;

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 no jurisdiction over the dispute involved herein.

AWARD

Case remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of May 1964.