

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NEW YORK CENTRAL RAILROAD COMPANY (BUFFALO & EAST)**

DISPUTE.—

"Claim that the agreement between the New York Central Railroad Company, Buffalo & East, and the employees of the signal department represented by the Brotherhood of Railroad Signalmen of America, effective January 1, 1925, is applicable to the Catskill Mountain Branch of the River Division and that signal department employees located on such Branch Line be classified and compensated in accordance with such agreement."

FINDINGS.—The third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This dispute being deadlocked, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

On February 1, 1932, the New York Central Railroad Company took over and has since operated as a part of its own property (designated as the Catskill Mountain Branch of the River Division), the properties of the Ulster and Delaware Railroad. Shortly after the acquisition all signal department jobs on the Branch were abolished with the exception of that held by Mr. C. W. Nestell, a former employee of the Ulster and Delaware.

Rule 8, paragraph (e) of the Agreement between the parties dated January 1, 1925, provides that:

"Seniority, unless otherwise agreed upon, shall be restricted to the territory over which one Supervisor has jurisdiction."

Signal Supervisor, G. E. O'Brien has jurisdiction over the River Division. In 1933 and in 1935 but not in 1934 O'Brien issued seniority rosters which included Nestell as a "Signal Maintainer"—a classification described in Rule 1, paragraph (b) of the Agreement between the parties. In April 1935 the Employees' Committee requested the Management to pay Nestell at the rate of 83¢ an hour, the rate paid Signal Maintainers on the River Division pursuant to the Agreement. The Company had been paying Nestell and is still paying him at the rate of 73¢ an hour, his former rate of pay on the Ulster and Delaware. The Company declined to recognize the 83¢ rate as applicable to Nestell, and as a result of the controversy, promptly removed his name from the River Division roster.

Thus, from the beginning with the exception of the unexplained gap in the year of 1934 and until the present controversy arose, the Company officially included Nestell in the River Division seniority district, and recognized his position as a Signal Maintainer, and did not remove his name until the question of the applicability of the Agreement was raised. The sole question for our determination is whether or not the Agreement is applicable.

The issue appears to be simple. When the New York Central took over the Ulster and Delaware property, Nestell, the only person now in question, ceased to work for the Ulster and Delaware and became an employee of the New York Central. He was paid by the New York Central, he was under the exclusive control of the New York Central Management, and he was recognized at the start as belonging to the River Division seniority district performing the services of Signal Maintainer. These facts are not in dispute and having been established it follows that the Agreement applies fully to Nestell, as to all other Signal Maintainers similarly employed by the Company. Under the Agreement the New York Central has a contractual obligation to apply its terms to all persons whom it employs as Signal Maintainers. Therefore, the Agreement applies to Nestell.

We do not need to ask what would be the situation if the Signalmen on the Ulster and Delaware had acquired seniority rights and a wage scale by virtue of an Agreement between their representatives and the Road. No such Agreements were in effect on the Ulster and Delaware. Whatever claims might have been asserted had Nestell entered the New York Central's employ with rights previously acquired from his former employer, in this case he had acquired no such contractual rights, and legally his situation is no greater and no less than that of any new man entering the New York Central's employ. From the moment of his employment by the New York Central as a Signal Maintainer the Agreement became applicable to him by its very terms, as to wage rates, seniority, and all other matters. If in equity, Nestell's years of service with the Ulster and Delaware should be taken into account in determining his seniority with the New York Central and if there is no provision in the Agreement which takes care of such a situation then the matter is one which can be adjusted and can only be adjusted by negotiation between the parties modifying the effect of the Agreement. Unless and until such a modification is made, legally the Agreement stands and must be applied.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of March 1936.