

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA

LOUISVILLE & NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim (a) That A. N. Fasig be paid the difference between the Signal Foreman's rate (\$200.00 per month) and that actually received by him April 13, 1936, to July 18, 1936.

"Claim (b) That C. F. Bramlett be paid the difference between the Signal Foreman's rate (\$200.00 per month) and that actually received by him July 18, 1936, to April 23, 1937."

EMPLOYES' STATEMENT OF FACTS: "The signal line control circuits, cross-arms and brackets with the necessary cables, terminal housings and other such accessories are, together with the telephone and telegraph line circuits, carried on a joint pole line. The original construction of the apparatus comprising the signal line and its accessories was performed by the signal department with signal employees under the supervision of a Signal Foreman. Likewise, the repairs, changes and alterations of all this work has, prior to this time, been performed by signalmen.

"On April 13, 1936, a gang was organized to rebuild the signal and telephone and telegraph pole line on the Cincinnati Division. An employee whose classification was that of telephone line foreman at a rate of pay of \$189.80 per month, was placed in charge of the gang. When first organized the gang consisted of one signalman at 80 cents per hour, three telephone linemen at 75 cents per hour and four laborers at 38 cents per hour. Later the consist of the gang was changed to three signalmen at 80 cents per hour, three telephone linemen at 75 cents per hour and a variable number of laborers (4 to 12) at 38 cents per hour.

"The Signalmen's agreement does not include the classification of telephone lineman or of laborer. It is recognized that neither of these two classifications are necessary or desirable in the signal department as the classes defined in Rules 2, 3, 4, 5, 6, 8 and 9 are sufficient to cover all employees in the department.

"The position of foreman of this gang was not advertised to employees in the signal department.

"The work performed by this gang included the complete rehabilitation of the signal line which consisted of the stringing of new signal line circuits, setting new poles and installing new cross-arms where necessary, building or repairing signal cable, hanging signal cable and terminal housing. Some repair work, such as setting new poles and installing new cross-arms was also done on that portion of the line that is considered exclusively telephone line work.

of laborers in the former agreement has been eliminated. It is understood that laborers may be employed to perform strictly laborers' work only.'

(Underscoring mine).

"I wish to direct attention of your Honorable Board to the fact that this is the first unadjusted dispute with Signalmen brought before this Board from L&N employes, which this carrier regrets. Until this case, all grievances have been amicably adjusted, the carrier going to extreme lengths to satisfy its employes, but to have acceded to the demands of the employes in this case would have proven a detriment to the service, and would have denied to the linemen, represented by the organization of Agents, Telegraphers, Telephoners, Towermen and Levermen, a right clearly their own. If the Board sustains claim of employes in this case, it will give an unfair advantage to one craft against another, whose right to the work has never before—through all the years—been disputed."

There is in evidence an agreement between the parties effective November 1st, 1929.

OPINION OF BOARD: This case involves a sharply contested question of fact; i. e., the relative portion of the time of the gang occupied on signal as opposed to telegraph and telephone work.

The carrier asserts that it was approximately one-third on signal and two-thirds on telegraph and telephone; the organization vigorously asserts that these apportionments are exactly the opposite of the facts.

The case turns on this question for this reason: During most of the period involved there were in the gang nine men classed as laborers; in theory had there been a separate signal gang it would have had its helpers to do work these so-called laborers admittedly did perform assisting the signalmen on signal work. Therefore, if more than one-half the time of these laborers was employed in assisting the signalmen it would be the equivalent of five helpers in a signal gang which, added to the three signalmen in the gang, would make a total of not less than eight signal employes, and accordingly, under Rule 3 of the Signalmen's Agreement, there being more than seven men employed in the gang the employment of a division signal foreman is required, and under those contentions the claim would have to be sustained.

It must be possible for the parties to supply the Board with more positive evidence on this point. There is even conflict in the evidence concerning the number of wires of each class involved. This is a physical fact still in existence and definitely ascertainable for whatever weight it may have in indicating the proportionate time of the laborers in the respective operations.

This Board should not be called upon to decide between two such widely conflicting claims concerning facts and believes the parties can supply it with more definite evidence on the point, and consequently rules the case should be remanded to the parties with instructions to develop the actual facts. Since evidently they were not determined at time of conference between the parties it may be that the matter will dispose of itself upon the determination of the above facts. Otherwise the parties may bring the case back with the facts developed.

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 case is remanded in accordance with the Opinion.

AWARD

Case remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of May, 1938.