

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

**THE NASHVILLE, CHATTANOOGA &
ST. LOUIS RAILWAY**

STATEMENT OF CLAIM: "Are the following section laborers, viz: Roy Butner, Geo. Moore, Joe Swain, John Tilford, Marion Hickman, Ernest Manly and Clarence Hoosier, employed as such by The Nashville, Chattanooga & St. Louis Railway, entitled, under the provisions of Maintenance of Way Rule 46, to the difference in section laborer's rate of pay and signalman helper's rate of pay for the work performed at Tullahoma during the second half of November, 1937, as indicated in Joint Statement of Facts?"

JOINT STATEMENT OF FACTS: "These men under the supervision of their section foreman, were engaged in helping to do the following work:

"Excavating for concrete foundations and ditches for cables, refilling ditches for cables and around concrete foundations, trucking and handling material, mixing and placing concrete and jacking pipe under street.

"Rule 46 reads:

'COMPOSITE SERVICE

'(a) Except as provided in Paragraph (c) of this rule, an employee performing work in a higher classification for four hours or more on any day shall be allowed the higher rate of pay for the entire day. An employee contending for a higher rate of pay under this rule shall notify his immediate superior at the close of the day, in writing, stating his reasons for claiming the higher rate. If the claim is declined, he may handle in accordance with Rule 3.

'(b) When an employee is temporarily assigned by proper authority to a lower rated position, his rate of pay will not be reduced.

'(c) An employee left in charge of a gang for one or more full days in the Foreman's absence when the Foreman is receiving pay, shall be paid the Assistant Foreman's rate of pay for each full day he is in charge of the gang.

'(d) B & B Sub-Department employees will have no claim for the higher rates when they are not filling the place of a higher rated employee who is off duty; except that an employee sent out on line of road to perform work will be paid in accordance with the class of work to be done.'

the rules and are not authorized to interpret the rules. The Carrier further contends that the employees cannot rightfully select a rate from an agreement with another class of employees and apply such rate to their own class. This would be contrary to the principle always followed in interpreting agreements made between Carriers and different classes of employees. With respect to the statement of the Employees as to the provision of Maintenance of Way Rule 46 (a) the Carrier contends that, while this rule is not controlling for reasons heretofore stated, the work performed by the claimants here involved being that of common laborers similar to that performed by ordinary section laborers, they were not doing work in a higher classification as contemplated in Rule 46 (a). They merely performed laborers' work which was necessary in connection with the installation of the flasher light signals.

"The Carrier does not subscribe to the Employees' statement that an employee performing work in a higher classification for four (4) hours or more on any day shall be allowed the higher rate of any pay for the entire day regardless of the department in which the work might be performed, unless, of course, the work was performed in the Maintenance of Way Department, in which event the applicable rate would apply.

"As heretofore stated, the employees of the Maintenance of Way Department and the employees of the Signal Department hold separate and distinct agreements and, as the employees of the Maintenance of Way Department have no contractual rights to legislate for work performed in the Signal Department, the claims are without merit and should be declined.

"The Employees, in discussing these claims, admitted they had no contractual claim for the work and the Carrier was at liberty to go outside of the Maintenance of Way Department to get laborers to do the kind of work herein described, but so long as the Employees covered by the Maintenance of Way Agreement were used for this service, they were of the opinion the Signal Helper rate should apply.

"The Carrier feels, by using section laborers to do laborers' work in the Signal Department, provisions are made whereby this class of employees are given additional work that would not otherwise obtain. It was pointed out to the Employees in the discussion of these claims that a decision in their favor in the instant case could operate to their detriment, as there have been instances where, on account of using section men to do laborers' work in the Signal Department, it was necessary to increase the number of section laborers in the gang, which, of course, resulted in cut-off section laborers being restored to the service. Should the Carrier be forced to pay to section laborers Signal Helpers' rate for common labor in the Signal Department, it would be to its interest to go outside of the Maintenance of Way Department for such laborers, who could be obtained at laborers' rate.

"That the work performed by these laborers in the instant case required no skill; they were not charged with the responsibility of whether or not proper proportions of sand, cement and stone were used in mixing cement, and the fact that the carrier has used inexperienced laborers on such work is evidenced by letter of February 26, 1938, addressed to Mr. Geo. F. Blackie, Chief Engineer, by Mr. J. H. Schubert, Signal and Telephone Engineer, a copy of which is filed herewith as Carrier's Exhibit 'C'."

OPINION OF BOARD: This dispute differs in no essential respect from the dispute involved in Award 674, Docket MW-712. In this dispute the record clearly indicates that the claimants gave notice in writing of their request for the higher rate of pay as contemplated by Rule 46 (a) of the agreement between the parties.

In the present controversy the foreman of the section crew as well as section laborers were assigned to the signal crew. In the previous dispute the carrier merely assigned certain section laborers to the signal crew. This, however, is not material as the record here clearly indicates that the section men worked under the direct supervision of members of the signal crew.

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 claimants under the rules of the agreement between the parties were entitled to the rate of pay of a signal helper on the days they were required by the carrier to assist the signal crew in its work.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1938.

DISSENT ON AWARD No. 675, DOCKET MW-713

As stated in the Opinion of the Board, the dispute involved in this case is similar, in its essentials, to that covered by Award 674, Docket MW-712. For the reasons stated in the dissent on Award 674, therefore, I dissent on this award, and that dissent applies with equal force to this case except that that part of the dissent on Award 674 dealing with the failure of the employes to comply with the provision of rule 46 (a), requiring notice of claim of a higher rate at the close of each day, does not apply in the instant case because the claimants here involved did give the required notice.

(Signed) GEO. H. DUGAN

FURTHER DISSENT—AWARD No. 675, DOCKET MW-713

Reference is made to the Further Dissent—Award No. 674, Docket MW-712, registered by the four members of the Third Division signatory thereto, which is to be considered in full effect and application as a further dissent to the instant Award No. 675, Docket MW-713.

(Sgd.) C. C. COOK
(Sgd.) R. H. ALLISON
(Sgd.) A. H. JONES
(Sgd.) J. G. TORIAN