

Award No. 774

Docket No. SG-763

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "That F. J. Robertson, Signal Helper, be paid at the helper's rate (56¢ per hour) for all time lost from January 17, 1938, to March 31, 1938, both dates inclusive, because of being improperly laid off through force reduction, during which time signal helpers' duties on the Missouri Division were being performed by an employe of another department."

EMPLOYES' STATEMENT OF FACTS: "F. J. Robertson is a signal department employe of the Missouri Pacific Railroad, holding seniority rights in the helper's class on the Missouri Division (Eastern District). On January 15, 1938, he was relieved from service because of force reduction.

"At the time Robertson was laid off, as well as prior to said date, the division officials of the Missouri Division had assigned the care of oil signal lamps to an employe of the Maintenance of Way department. This practice was protested by the Local Chairman and claim filed for time lost by Robertson during the continuation of said practice.

"The practice was discontinued as of April 1, 1938, and the duties assigned to regular signal forces then in service. The employes, represented by the B. R. S. of A. have an agreement with the management of the Missouri Pacific Railroad providing that the installation, maintenance and repair of signal apparatus shall be performed by signal department employes covered by said agreement.

"The Brotherhood takes the position that the lamp on a signal is a part of the signal regardless of whether it be an oil lamp or electric lamp and the maintenance of which shall be performed by Signal Department employes."

POSITION OF EMPLOYES: "It is the position of the Brotherhood that F. J. Robertson should have been assigned to the duties of maintaining the signal oil lamps on the territory of which Poplar Bluff is the headquarters instead of being removed from service account force reduction on January 15, 1938. He was the senior signal helper relieved from service on that date and the oil signal lamps here referred to were at the time being maintained

rights as a lamptender and by mutual agreement was credited with seniority rights as a signal helper retroactive to January 1, 1937.

"Robertson worked continuously as either a signal helper or assistant signalman from June, 1936, to January 15, 1938, when he was laid off in a force reduction. Having forfeited his seniority rights as a lamptender under the Maintenance of Way Agreement he could not, of course, go back to the job of lamptender at Poplar Bluff, which he had been doing during the period May, 1934, to May, 1936, inclusive. Mr. Robertson when he found himself out of a job account displaced in a force reduction and insufficient seniority rights as a signal helper to place himself as such, conceived the idea that he could get his lamptender's job back at Poplar Bluff on the contention that the lamptender was doing signal helper's work, such as maintaining twelve signal lamps in the territory north of Poplar Bluff that the lamptender had been taking care of since 1931 without, as stated above, complaint from either the maintenance of way or signalmen employees. Robertson himself took care of this job as a lamptender from 1931 to May, 1936, when he was promoted to the signal department and he never made any complaint about performing the duties of signalman when he was working on the job nor did any other signalman make any complaint account Robertson taking care of these signal lamps in this territory until Robertson himself, as stated above, made a claim when he was displaced in force reduction in the signal department in January, 1938. The maintenance of these twelve signal lights is only incidental to the job of lamptender, records showing that of the 240 working hours per month the lamptender devotes an average of 36 hours per month to maintaining both the switch and signal lamps north of Poplar Bluff to Hendrickson.

"Mr. Robertson eventually exercised his rights as a signal helper under the Signalmen's Agreement, starting to work on April 25, 1938, on the Eastern Division (St. Louis to Kansas City) and has been continuously employed in this capacity since that time.

"Summarizing the facts in this case are:

"That when the Signalmen's Organization on January 24, 1938, originated this claim in behalf of Mr. Robertson, who had been displaced in a force reduction on January 16, 1938, and prosecuted their case through the channels provided for in the wage agreement with the Signalmen, it was recognized by the management that the work of maintaining these twelve signal lights is a class of work that properly belongs to the Signalmen. Adjustment of the irregularity of having an employee covered by the Maintenance of Way Agreement maintain these twelve signal lights and transfer the work to the signal maintainer who works out of Poplar Bluff and covers this territory daily, was conceded promptly following the initial conference held by the management with the General Chairman of the Signalmen's Organization.

"There is no merit whatsoever in the employees' claim that Robertson, now holding seniority as a signal helper since his promotion from Lamptender job at Poplar Bluff in May, 1936, be compensated on the basis of 8 hours daily at the signalman helper's rate account the carrier utilizing the services of a lamptender to maintain these twelve signal lamps that did not consume an average of one hour per day, during the period from the date the employees' complaint was originated to the date it was corrected, viz: from January 17th to April 1, 1938.

"There is no merit in the employees' claim for monetary consideration in this case and same should properly be denied under the circumstances."

There is in existence an agreement between the parties bearing effective date of March 1, 1929.

OPINION OF BOARD: The fact of the violation of the schedule consisting in the permitting of a Maintenance of Way employee doing signal work

during the period in question is conceded. The only controversy here is as to whether claimant is entitled to reparation. He claims eight (8) hours per day for the period involved; the Carrier claims that the work occupied less than one hour per day and the claimant would not have been employed but that the work in question could have been turned over to (as it subsequently was) the signal maintainer who remained working. Carrier further maintains the claimant in no event is entitled to assert the claim, first, because he could have displaced junior employees working during that period of time, and, second, because there were employees senior to him laid off at the time who would have had a superior right to the work. Such senior employees, however, made no claim to it and this claimant was the only one who did. Since they saw fit to waive their right he automatically became entitled to the work. He was not under obligation to displace the junior employees referred to, and had he done so that would have given rise to a similar claim on their behalf. It is the view of the Board, however, that claimant is not entitled to eight (8) hours per day but only to be paid as a call under the Call Rule on each day that Maintenance of Way lamptender attended signal lamps within the period involved.

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 Employee involved in this dispute are respectively Carrier and Employee 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 current Signalmen's Agreement was violated by the Carrier in requiring work covered by that Agreement to be performed by employees not covered thereby, and the claimant is entitled to be paid as for a call on each date that occurred.

AWARD

Claim sustained as for a call for claimant on each day on which signal lamps were attended by Maintenance of Way employee between January 17 and March 31, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1938.