# Award No. 1291
# Docket No. SG-1261

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Herbert B. Rudolph, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

## ATLANTA TERMINAL COMPANY

**STATEMENT OF CLAIM:** "(a) Claim that C. A. Lindsay, Jr., R. B. Weeks, C. E. Ball, T. N. Henderson, T. B. Watkins, H. T. Moore, J. W. Creel, H. C. Brown, H. G. Youngblood, et al., who are working in the signal gang on the Atlanta Terminal and who are classified and paid as laborers, be classified and paid as signal helpers and that they be paid the difference between the helper's and laborer's rate for all time worked since December 5, 1939.

"(b) That the carrier violated and is continuing to violate the agreement between its employes, represented by the Brotherhood of Railroad Signalmen of America and the Atlanta Terminal Company, by employing persons to perform installation, construction, repair and/or maintenance work on signal and interlocking apparatus at less favorable rates of pay than those contained in the agreement."

**EMPLOYES' STATEMENT OF FACTS:** "On or about November 1, 1939, a signal gang from the Western Lines of the Southern Railway was temporarily transferred to the rebuilding of the signal and interlocking system on the Atlanta Terminal. Signal Helpers C. A. Lindsay, Jr., R. B. Weeks, and C. E. Ball, who hold seniority on the Western Lines of the Southern Railway and whose signal helper's seniority dates are as follows:

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| C. A. Lindsay, Jr. | — | 5-14-37 |
| R. B. Weeks | — | 8-13-37 |
| C. E. Ball | — | 11-16-37 |

were in the gang at the time it was transferred.

"Lindsay, Weeks and Ball performed signal helper's work on the Terminal during the month of November and were compensated in accordance with their classification. On December 1 they were advised that their services as helpers were no longer required, but if they desired to remain as laborers at an hourly rate of pay considerably less than that of signal helper, they could do so. As they had definite obligations to meet and as they would otherwise be unemployed, they remained on the job at laborer's rate of pay knowing that such procedure on the part of the carrier was a violation of the agreement and that the matter would be handled for correction.

"T. N. Henderson, T. B. Watkins, H. T. Moore, J. W. Creel, H. C. Brown and H. G. Youngblood and others were subsequently hired and classified as laborers and assigned to signal helper's duties in the signal gang. Lindsay,

the plan and sample which was supposed and understood to be what was required by the contract, and to be paid for at the contract price. We think that the practical construction which the parties put upon the terms of their own contract, and according to which the work was done, must prevail over the literal meaning of the contract, according to which the defendant seeks to obtain a deduction in the contract price.'

"We think that these holdings by the courts are perfectly sound and appropriate for application in the instant case. There is no stated prohibition against the use of common labor in connection with signal work in the agreement between the parties. The application mutually given the agreement by the actions of the parties over the past twenty years without controversy forbids the adoption now of the fantastic and extravagant construction which the petitioner would have your Honorable Board place upon it. Even if the language of the agreement lent color to their argument—which it does not—we still insist that the actions of the petitioner as well as of your respondent over the past twenty years have placed a practical construction upon its terms contrary to that which petitioner now asserts.

SUMMARY

Your respondent has shown that:

"1. There is nothing contained in the current agreement which directly or by implication places any limitation upon the employment of laborers or unskilled work at commensurate rates for that class of workers in connection with signal installation, construction, or maintenance.

"2. It has also shown the history of the rule, which it believes petitioner will rely upon. As originally written and applied it did not forbid the employment of common labor, and no such construction of it was ever urged; that it was modified merely for the purpose of quieting the fear of the employes that the carriers would be prone to employ helpers to perform the work of journeymen or their apprentices except for the inclusion in the rule of a definite limitation upon the kind of work which a helper might perform when working alone, or when working with one or more other helpers.

"3. The construction placed upon the agreement by your respondent is neither novel nor unique but on the contrary is the construction generally placed upon it and with the tacit acquiescence of the employes and their representatives in the territory in which respondent's property is located, and generally throughout the country.

"4. Your respondent has also shown that analogous contracts contain the same provisions with respect to employment of helpers but that laborers are also employed in connection with work of skilled craftsmen, and it has never been contended under such contracts that the employment of common labor impinges upon the rights of journeymen, apprentices, or helpers.

"5. Respondent shows that the construction placed upon the contract over a period of twenty years, by the actions of the parties to it, has clearly construed its meaning, and that to place any other meaning upon the language of the contract now would be fantastic and extravagant; it would in fact be to strike from the agreement certain of its provisions which the parties have heretofore thoroughly understood and observed and to write into it in their stead certain terms and conditions here urged by the petitioner, which, so far as the records of this craft and its representative organization indicate, was never thought of or urged prior to some five or six years ago.

"In view of all these things your respondent urges that the claims here before your Board must in justice be denied."

**OPINION OF BOARD:** In 1939 the Atlanta Terminal Company undertook a program of rebuilding its signal and interlocking system. To perform

this work it was necessary to recruit a signal gang in addition to its regular signal maintenance force. The gang, as finally organized, consisted of one leading signalman, three signalmen, two assistant signalmen, two helpers, and other employes classified as laborers which varied in number from five to eight. It is with regard to the classification and payment of these employes as laborers that this claim relates.

Rule 1 of the existing agreement classifies the employes covered by the agreement, as follows:

> "Gang foreman, leading signalman; leading maintainer; signalman, signal maintainer; assistant signalman, assistant signal maintainer; signal helper."

There is no classification of "laborer" in the agreement, no wage rate for such class, nor is there work of the signal department stated that may be performed by employes classified as laborers.

A signal helper is defined by the agreement in Rule 1 (e), as follows:

> "A man assigned to assist other employes specified herein shall be classified as a signal helper. A signal helper when working alone, or two or more signal helpers working together, may perform such work as filling and cleaning lamps, cleaning and oiling interlocking plants, bonding track, renewing primary batteries, excavating, and handling material, but shall not be permitted to do work recognized as distinctively maintainers' or signalmen's work."

It is clear that Rule 1 (e) contemplates that common labor performed in connection with signal work, is signal work within the meaning of the agreement. This record discloses that the work described in Rule 1 (e) is the very type of work performed by the "laborers" here concerned. This rule further contemplates that the helpers will perform common labor either while working alone or with their superior, or when two or more signal helpers are working together. Certainly, if it were intended that a lower classification should also perform this unskilled work which the agreement says may be performed by the helpers, while working alone or in groups, and which is definitely classified as signal work, a wage rate for such lower classification would be provided. The wage rate found in Rule 60 was very obviously intended to include all the work covered by the agreement, which includes the common labor set out in Rule 1 (e), and no wage rate is therein provided for a lower rated position than helper.

Award 565 is controlling. There, as here, a signal gang was organized to do extensive work, and the attempt was made to employ "laborers," under the claim "that laborers classified and paid as such performed only laborers' work." This Division of the Board held that work performed in the Signal Department, generally recognized as signal work, is subject to the agreement, and that the agreement containing no classification of "laborers," there was a violation by employing laborers to perform signal work. We are not inclined to disturb Award 565. Had it been within the contemplation of the parties at the time of making the agreement that laborers should perform a part of the work generally recognized as signal work, such fact should have been mentioned in the agreement, at least insofar as the wage rate is concerned. Otherwise, signal work would be performed by employes not covered by the agreement, contrary to the constant holding of this Board that work covered by an agreement cannot be performed by employes not covered thereby.

The carrier depends to a large extent upon its past practices in employing laborers to perform common labor. We have carefully considered the record as made by both the carrier and the employes, and upon this issue we are convinced that this record discloses no limitation upon the agreement within the meaning of Award 615 of this Division. This same contention was made

in Award 565, and it was there held that practice was of "no moment." In this connection also see Awards 137, 456, 735, 906 and 1218.

**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 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 carrier violated the agreement by its failure to pay the Signal Helper's rate of pay to the claimants; it also violated the agreement by employing laborers to do signal work.

AWARD

Claim (a) sustained; Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.

**Dissent to Award No. 1291—Docket No. SG-1261**

The evidence of this Carrier's right to use laborers to perform the common labor work necessary in an undertaking such as here involved, is conclusively and beyond possibility of sound refutation disclosed by the record. Prior to the adoption of any Agreement between the respective parties during negotiations of the current Agreement, effective November 2, 1929, and continuing ever since, the Carrier has always used laborers to perform common labor work when engaged in installation, construction, reconstruction and repair of signal and interlocking plants.

The current Agreement had been in effect ten years before the Employes filed any complaint. Prior to the adoption of the Agreement, during the period of negotiations and for the ten years following the consummation of negotiations, the Carrier employed laborers working with the signal gang to perform common labor work herein now complained of as being in violation of the Agreement. The Employes by their very acquiescence in the use of such employes to perform this class of work over such a long period of time without protest is indicative of their understanding and that they were in full accord with the Carrier's action, thereby giving further force to the intent of the parties at the time the Agreement was negotiated.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ R. H. Allison
/s/ C. C. Cook
/s/ A. H. Jones