

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James H. Wolfe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "(a) Claim of C. M. Audibert and W. A. Kissel, Telegraph and Signal Department helpers, for the difference in the amount they earned at the helper's rate on April 7, 8, 11, 13 and 14, 1939, and the amount they should have been paid at the mechanic's rate on dates in question.

"(b) Claim of R. Mayberry, furloughed Telegraph and Signal Department employe, for eight hours at the mechanic's rate on April 7, 8, 11, 13 and 14, 1939, and claim of R. F. Reber, N. J. Stephens and H. N. Arkless, furloughed Telegraph and Signal Department employes, for eight hours at the mechanic's rate of pay on April 15, 18, 19, 21 and 22, 1939, account Electric Traction Department employes performing Telegraph and Signal Department work at 'B' Connection, 23rd Street, Philadelphia, Pa."

EMPLOYES' STATEMENT OF FACTS: "On April 7, 1939, the support for 23 cables (3 electric traction, 7 telephone and telegraph, and 13 signal) located on South wall, east of Baltimore and Ohio Railroad approach at 23rd Street Elevated Railroad, Philadelphia, Pa. collapsed, causing these cables to fall.

"The telephone, telegraph, and signal cables and their supports were installed and maintained by Telegraph and Signal Department employes. The work of replacing this support consisted of drilling holes in the concrete wall and fastening iron braces to hold the cables.

"The number of employes, their occupations, and dates they performed this work were as follows:

	Dates in April, 1939															
Occupation	8	10	11	12	13	14	15	17	18	19	20	21	22	24		
No. of Signalmen	6	2	3	4	3	6	4	3	3	3	3	3	3	—		
No. of Gang Foremen,																
Electric Traction	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
No. of Linemen, Electric Traction	2	2	2	0	2	2	2	2	2	2	0	2	2	2		

"On April 7, 8, 11, 13, and 14 Audibert and Kissel were working as Helpers and on the same dates Mayberry was on furlough. These three employes are qualified mechanics and were reduced account force reduction. On the evening of April 14, due to further force reduction, Audibert and Kissel were furloughed, and also Reber, Stephens and Arkless were placed on furlough.

the Carrier and its employes, represented by the Brotherhood of Railroad Signalmen of America, and respectfully requests your Honorable Board to dismiss the claim of the employes in this matter.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same."

OPINION OF BOARD: On April 7, 1939, there collapsed the support for twenty-three lead sheath cables (three of which were electric traction cables, seven telephone and telegraph cables, and thirteen signal cables) located as shown in Statement of Facts, causing the cables to sag in a long loop and placing greatly increased strain on the two ducts still intact at each end of the catenary. On April 7 a gang was quickly recruited from among Signalmen and Traction employes. We think that the potentialities for harm latent in this situation may reasonably be classed as an emergency which would exist until the sag was relieved by a temporary support. Where there exists a situation potential with danger the Carrier is not required to stop and meticulously consider the pros and cons of the likelihood of the delay of actual injury so that it may be sure that it is selecting just the proper crews which the agreements call for. Where a situation is fraught with danger to persons or property, expedition is the thing. It may be fairly inferred that the crew selected for the first day's work, or April 7, 1939, was for emergency. Hence, any reparations for this day are naturally out of the reckoning.

The Carrier demonstrated that the auto-railer truck with its raisable platform to assist in raising the sag and in supplying a platform on which men could stand in working to install the new support was a necessary piece of equipment in the work; that it required a man trained in its operation to operate it safely; that there were no Signalmen trained to operate it, but that employes in the Traction Department were trained to operate it. Therefore, for this reason, and not for the reason that it was part of the equipment of the Traction Department, the Carrier must, at all events, be allowed one of the Linemen from the Traction Department capable of operating the auto-railer truck throughout the operations. Thus, the claim is reduced to the days claimed exclusive of April 7, and to two Traction Department employes instead of three. We proceed to consider the claim as thus reduced.

The Employes pose the principal question as follows: "Does the Carrier have the right to assign the work of the Telegraph and Signal Department to employes of another department?" This states the question too broadly. The question is: Do the employes of the Telegraph and Signal Department have the sole right to rebuild or repair housings, which support both traction cables and signal cables, at least in the locality constituting the Philadelphia Terminal Division? The Employes assert "Yes," but furnish no evidence, resting content to call attention to the fact that a majority of the employes on this gang were Signalmen. The Carrier asserts "No," but furnishes no evidence as to the practice and custom, resting content to state: "When telephone and telegraph, signal power, or signal and switch control cables become damaged or fall into disrepair, the Carrier calls out employes in the Telegraph and Signal Department, which is responsible for the maintenance of such cables, to restore them to their normal condition. On the other hand when electric traction cables require repair of any kind, the Carrier calls upon its Electric Traction Department employes. When the collapse of a support, as in the instant case, or a fire damages both Electric Traction and Telegraph and Signal Department cables at the same time, the Carrier sends out a force made up of employes from both Departments." The Carrier further states: "This is particularly true in view of the Carrier's practice of calling out employes from each Department when some damage occurs to both kinds of cables at the same time and place." The Employes admit that if there were damage to the signal lines Signalmen would be called; if

damage to traction lines, Traction men would be called; and do not deny that if there were damage to both lines running through the same conduits, manholes, or over the same ducts, a composite crew might be called, but call attention to the fact that in this case the housing alone was destroyed. This appears to be the case, for the work done, according to the Carrier, consisted of drilling holes in a concrete wall with a pneumatic drill; placing cinch anchor bolts into these holes; burning 3" holes in angle iron with acetylene torch; attaching angle iron to bolts so as to form a rack for the cables to rest upon.

But the record in regard to the practice in vogue in respect to the construction and repair of composite housings consists only in counter assertions by the parties. Assertions are not proof. This particular housing was, according to the Carrier, built by an independent contractor who also laid the traction cables, but there is no evidence as to what was the custom generally as to which department constructed, maintained, or repaired housings in this locality supporting both types of cables as distinguished from the laying and repair of the cables themselves. It seems probable that long before the Pennsylvania Railroad was electrified, Signalmen built and repaired housings, because there were then only telegraph, telephone and signal cables, all of which were under that department, and that such practice may have continued and become traditional as to housings supporting both traction and signal cables. But there is no evidence from which that fact could be definitely ascertained. To resolve this question one way or the other without evidence would be to guess who was right. Both parties at the argument expressed themselves as being able to produce evidence on that point.

The case in this regard will be remanded to the field for investigation as to such practice and for evidence as to which of the claimants named herein would have been affected had not the Foreman and one of the Linemen been taken from the Traction Department. The Lineman necessary to run the auto-railer truck taken from the Traction Department will be considered as properly used. The Foreman was taken from the Traction Department. The Carrier contends it was a supervisory position and that he could be taken from anywhere. The Employees contend that as a Foreman he should have been drawn from the Signalmen, and that in any event he actually assisted in the performance of the work, and this displaced a Signalman in such work. In the remand the parties should seek to determine whether the facts are such as to bring it under the ruling in Docket SG-1315, and, if not, whether the Foreman actually performed Signalmen's work.

The Carrier strenuously contends that the Division has not jurisdiction, because the Maintenance of Way men are here involved. This Division has jurisdiction of Maintenance of Way men. (Railway Labor Act, Sec. 3, First (h).) It further contends that since another department, to-wit, the Traction Department, was involved, no complete decision can be rendered without giving notice to proper representatives of the organization representing such employees. The Maintenance of Way men are not making claim, and for aught that appears, their time for doing so has elapsed. The question of binding that organization with a decision that work on composite housings belongs to the Signalmen presents a more serious question, but it has been so uniformly the practice of this Board to make awards where claims are made that work belongs to the claiming craft as against another craft, without giving notice to the latter and without apparent difficulties or complications arising, that we are not now inclined to hold that an award cannot be made or a rule or principle laid down unless notice to the third party who might or might not intervene is given. It will be time enough to deal with that question when a precedent is challenged as not binding on the other craft because it did not have its day in court on the matter.

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 claim for wages for April 7, 1939, is denied.

That the claim for wages on account of employing one Lineman from the Traction Department necessary to run the auto-railer is denied.

• That for the remaining elements of the claim the case is remanded to the field for further evidence as specified in the Opinion.

AWARD

Denied to the extent indicated by the Opinion and Findings.

Remanded as to the remainder of the claim for purposes specified in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1940.