

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
BALTIMORE & OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "(a) Claim that the Carrier violated and continues to violate the provisions of the current signalmen's agreement, dated August 1, 1939, by the establishment and continuance of positions of 'System Signal Inspector' with classification and rate of pay not provided for in the agreement and assigning them to the performance of signal work as covered by the agreement.

"(b) Claim that these positions should have been bulletined and assigned to the senior qualified applicants in accordance with the provisions of the signalmen's agreement.

"(c) Claim that the senior qualified employees desiring these positions should be paid the difference between \$225.00 per month and the amount actually earned since the establishment of the positions on September 1, 1939."

**EMPLOYEES' STATEMENT OF FACTS:** "On September 1, 1939, by ex parte action of the Carrier, seventeen (17) new positions were created and classified as System Signal Inspectors. In filling these positions the management selected employees from and among the employees classified under Signalmen's agreement. They are paid at the rate of \$225.00 per month to cover all service rendered. No overtime is allowed for time worked in excess of eight (8) hours per day. When the service requirements make the purchase of meals and lodging necessary while away from home point, they are paid necessary expenses. They have no assigned territory and work wherever needed.

"The duties of these positions, like the duties assigned to Signal Maintainers, consist of routine inspecting and testing of signal apparatus and appurtenances. Prior and subsequent to the assignment of inspecting and testing of signal apparatus to the positions given title by the management as System Signal Inspectors, Signal Maintainers were and still are required to make regular and thorough inspections of all signal and interlocking apparatus under their care as frequently as necessary to insure that it is properly maintained and functions as intended. They must also observe instructions issued from time to time covering the inspection and testing of circuits, relays, indicators, electric locks, magnets and other apparatus.

"Employees were appointed to these positions without posting bulletins, as provided in Rule 48 of the current Signalmen's agreement.

"An agreement bearing date of August 1, 1939 is in effect between the parties."

ment, it being the Carrier's contention that these men are subordinate officials and come within the group of Ex Parte No. 72 of the Interstate Commerce Commission as heretofore outlined."

**OPINION OF BOARD:** This controversy arises, or is claimed to arise, because of the passage by Congress of the "Signal Inspection Act" which was approved August 26, 1937. This was enacted as an amendment to the Interstate Commerce Act (U. S. C., 1934 ed., title 49, Sec. 26); and its purpose was to provide for the installation and maintenance by certain railroads of certain appliances, methods and systems intended to promote the safety of employees and the travelling public. One provision requiring that each carrier should file with the Commission "certain rules, standards and instructions for the installation, inspection, maintenance and repair of the systems, devices, and appliances. . . ." In case of failure to comply with this provision the Commission was authorized to prepare such rules. As a matter of fact the Commission did, under date of April 13, 1939, make an order establishing such "rules, standards and instructions." These provided in great detail for the method of installing, maintaining, and inspecting the devices and appliances to which the Act referred. It is important to note that the rules set up no requirement prescribing by whom the work of installation, inspection, maintenance and repair should be done. This matter was left to the determination of the carriers and the employees under their agreements covering rules and working conditions.

The Carrier, here involved, on September 1, 1939 created seventeen new positions which it classified under head of "System Signal Inspectors." In filling these it selected men from the employees covered by the Signalmen's Agreement dated August 1, 1939. They were, however, appointed to these jobs without the posting of bulletins and they were not necessarily the senior qualified applicants.

The Committee for the Employees claims that this procedure was a violation of their agreement with the Carrier and particularly of Rules 48 and 49 which provide for the filling of vacancies and for assignments to new positions. The Carrier maintains that the men appointed became in fact "subordinate officials" and are not covered by the agreement or, to express the contention in another way, that the work of a signal inspector is not work which under the scope rule of the agreement is "generally recognized as signal work."

There are two questions for us to decide. Firstly: What is such signal work? Secondly: Has this work been assigned to these so-called "System Signal Inspectors" who, it is admitted, were not appointed to the new positions in the manner provided in the agreement?

The scope rule here involved reads as follows:

"The following rules shall apply to employes classified in Article 1, performing the work generally recognized as signal work, superseding all rules, working conditions and practices in conflict herewith."

This rule does not attempt to define what may be signal work. Under such circumstances we may, as was stated in Award 1486, look to the surrounding circumstances and particularly to the established practice of the parties to determine what they meant by the words "signal work."

The controversy here revolves around the work of inspection.

In 1935, prior to the passage of the Act in question and the promulgation of the rules authorized by its terms, this Carrier published General instructions No. 31 which relate to the maintenance and testing of interlocking plants. General Rule No. 3 reads as follows:

"3. Employees are responsible for the inspection, adjustment and proper maintenance of all signal and interlocking apparatus assigned to their care."

Pages 7 and 8 of these instructions set forth some of the tests which must be made, by whom they must be made, and how often they must be made. We find a wide variety of these tests which are to be made by signal maintainers who are employes coming under the provisions of agreement. Some of these tests are enumerated as follows:

"Ground resistance tests. Maximum resistance shall be 15 ohms.

"Lightning Arresters (Gas or Vacuum type).

"Signal indication lock circuit—

- (a) Light signals
- (b) Semaphore signals

"Switches—

- (a) Switch indication, power switches.
- (b) Restoring feature, E. P. Switches:
  - 1. Where equipped with friction lock
  - 2. Where not equipped with friction lock
- (c) Lock magnet, Pl. 0953, Fig. A on electro-pneumatic switch valves
- (d) Valve test, E. P. switches

"Cross protection-electric interlocking machines (G. R. S. Co. types)

—Main protection breaker and devices on all switches and signals so equipped.

"Switch and traffic lever locking, Part 199 A. A. R.—

- (a) Open lock circuit and move lever or latch against stop
- (b) With track occupied

"Ground detector readings

"Fouling circuits on switches where fouling wires are not visible.

"Switch circuit controllers."

Carrier's Bulletin No. 21, issued September 14, 1938, relates to the qualifications of applicants for the position of signalman. We find that they must be "competent and qualified to repair, test, and check relays in accordance with specifications." A letter of the Carrier to the General Chairman of the Brotherhood of Railroad Signalmen of America, dated June 1, 1939, shows that a signal maintainer was subject to discipline for the failure to perform this work. Notice and copies of instructions by the Carrier sent to signal maintainers relate to the testing of relays, and the men are cautioned that ammeters used in such work must be accurate. Other instructions provide that apparatus found to be defective on tests shall be sent to the shop for repair. Others provide for the testing of tunnel circuits with mill ammeter, for a check of all interlocking plants, and for megging the insulation resistance of signal circuits. Instructions to signal maintainers, issued October 27, 1938, provide for the inspection and testing of relays and for the inspection and testing of signal motor mechanisms for drop-away. Form 912 of the Carrier is a "Signal and Interlocking Inspection Report" to be filled out by those making such tests and inspections.

These are some of the exhibits in the case which indicate to what extent employes of the signal department have performed work ordinarily regarded as that of inspecting and testing. Furthermore, the record shows and it is common knowledge that inspection and tests of electrical apparatus are necessary, not only to determine the cause of trouble after it has occurred, but in order to prevent functional failure.

The Carrier argues that the work of the System Signal Inspectors is something beyond that which had been done by the maintainers. The distinction claimed seems to arise from the fact that they do nothing but inspect and have nothing to do with repairs. In this connection there is cited to us the Order of the Interstate Commerce Commission, dated February 5, 1924, clas-

sifying "inspectors of signals with rank and title below that of assistant signal engineer" as "subordinate officials." We are then referred to the Order of the Commission dated April 18, 1921 in which the duties of signal inspectors are classified as follows:

"Inspecting signal instruments and other installation and operation."

"Inspecting and reporting on the condition of interlocking plants and automatic signals."

"Inspecting non-automatic or non-electric signals."

The signalman or signal maintainer is then described as one "Engaged in repairing, rebuilding, installing, inspecting and maintaining signals and signalling apparatus used in interlocking plants and mechanically operated signalling systems, including highway crossing signals, gates, automatic flagmen and bells."

It is obvious that the attempt to set forth in appropriate language the distinction between the inspector and the signalman is difficult. Both inspect and test apparatus; the signalman and maintainer in addition do the actual work of repairing, rebuilding, installing and maintaining. But must it necessarily follow from this that if the Carrier takes away this latter class of work from the employe and confines his duties solely to testing and inspecting, he thereby becomes automatically a signal inspector, and as a consequence a subordinate official? If this is so the Carrier can by the mere division of the duties previously performed by an employe of this department deny to him work which for a long period of time has apparently been regarded as within the scope of his employment. We do not believe that we must give such slavish adherence to the letter of these attempted definitions. We are primarily concerned with what the Carrier and its employes have done as throwing light on what they intended to include within the term "signal work." We cannot permit what they have in practice regarded as work belonging to this class to be so lightly shifted to so-called "subordinate officials" who are not subject to the agreement. We are concerned primarily with the work done, not with the title of the person who does it.

We concede, as claimed by the Carrier, that all inspection work is not covered by the agreement. Obviously, officials of a railroad, both high and subordinate, including signal engineers and signal inspectors, do inspection work. This is carried on as an incident in the performance of their duties as officials; but it does not follow as a corollary that those who do nothing but inspection thereby become officials and cease to be employes covered by the agreement. It is clear that the number of officials assigned to the work of signal engineering and signal inspection precludes their performance of much of the testing and inspection which, of necessity, has to be done; and it is likewise apparent that prior to the creation of the new positions this field work was largely performed by the men covered by the Signalmen's Agreement. This is the only possible deduction which can be made and the exhibits show that it is a fact. If the Act of Congress and the Rules of the Commission require a more thorough job or the performance of extra work of the same class, the duties must be assigned to the men of the Signal Department. It makes no difference that the Carrier calls them "subordinate officials" or that they come within the technical definition of such an employe.

Neither the Act of Congress nor the Rules of the Commission require that this work shall be performed by those not included within the class covered by the agreement, and as a practical matter there seems to be no reason why it cannot be so performed. The Carrier under the terms of the agreement has some latitude in selection, for the requirement is that the work shall be assigned only "to the qualified applicant having the greatest seniority." Rule 48. It is significant that this Carrier has made the appointments entirely from the ranks of the signalmen.

The Carrier makes a point that the signal force has not been reduced by the creation of the new positions. We do not see, however, that this is a matter of any importance. The question is: Is the work assigned to these positions "signal work" as those words are used in the agreement?

The Carrier suggests that there may be a distinction between "testing" and "inspecting"; that "testing" is a word more applicable to the work of signalmen. But in its references to this work in its own orders and bulletins it makes no such distinction. The signalmen are required to "inspect" as well as to "test"; and the system signal inspectors are required to "test" as well as to "inspect."

In the letter of Mr. Dryden, Signal Engineer of the Carrier, to Mr. Petrie, dated August 29, 1939, he says, referring to the System Signal Inspectors: "It will be their duty to inspect and test signal apparatus." Mr. Dryden in his affidavit, Exhibit 2, and the System Signal Inspectors in their joint affidavit all state that the duties of the System Signal Inspectors consist in "the inspecting and testing" of signal apparatus.

From all the record it is apparent to us that one important branch of the work heretofore done by the signalmen has been assigned to the system signal inspectors in violation of the agreement.

**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 positions held by the System Signal Inspectors shall now be bulletined and assigned to the senior qualified applicants who shall be paid the differences in the wages already received by them and \$225.00 per month retroactive to September 1, 1939.

#### AWARD

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

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1941.