Award No. 2094
Docket No. MW-2126

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated Rule 18 of the agreement when it paid Rudolph Leewaye, Nick Leewaye and Frank Majillas sectionmen's rate of pay for work performed in the signal department making repairs to signal slide fences at Princeton, Colorado on May 23, 24 and 26, 1941; and

(b) That claimants be paid the difference between sectionmen's rate of pay and the rate applicable to signal maintainer helpers for the days involved.

EMPLOYES' STATEMENT OF FACTS: Rudolph Leewaye, Nick Leewaye, and Frank Majillas, section laborers, were assigned on May 23, 24 and 26, 1941 to make repairs to signal slide fences erected and maintained by the signal department.

The foreman under whose supervision the above employes performed the work of building the signal slide fences turned in time for the men at the signalman helper's rate but the roadmaster declined to approve the pay roll.

Signal slide fences are constructed and maintained by the signal department and do not come within the classification of trackmen's work.

POSITION OF EMPLOYES: There is an agreement in effect between the Carrier and its Employes, bearing date of February 1, 1941, which is, by reference, made a part of this case. Rule 18 thereof reads as follows:

> "COMPOSITE SERVICE. (a) An employe working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower rated position, his rate of pay will not be reduced.
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> "(b) For employes regularly assigned to higher rated position and temporarily assigned to a lower rated position their rates will not be reduced."

Messrs. Rudolph Leewaye, Nick Leewaye and Frank Majillas were regularly assigned as section laborers and their working conditions and rates of pay covered by agreement between the Carrier and the Brotherhood of Maintenance of Way Employes.

OPINION OF BOARD: As a result of a rock slide at Princeton, Colorado, a dragline was sent to that point to clean out rocks from a ditch between a slide fence and the hill from which the rocks came. To enable the dragline to work effectively, the slide fence was torn out by section forces. In restoring the fence, section forces were also used to replace fence posts and wire. These section laborers did not connect any of the electrical equipment. They set posts and placed fence wire on the posts. In short, they repaired signal slide fences. These fences are designed to guard against obstruction. When the circuit in the fence is broken by a rock slide, a signal indication of the danger is displayed in the territory which the signal fence serves.

It is to be reasonably inferred from the record that this fence was originally constructed by the Signalmen Department.

The employes contend it is the signalmen's duty to construct, maintain, and repair these signal slide fences, and when section laborers are required to perform this work, they are entitled to signal helpers' rate of pay, and they rely upon Rule 18, which reads as follows:

> "COMPOSITE SERVICE (a) An employe working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower rated position, his rate of pay will not be reduced.
>
> "(b) For employes regularly assigned to higher rated position and temporarily assigned to a lower rated position their rates will not be reduced."

The Carrier contends there has been no showing that the work performed by these men was other than common labor, such as customarily performed by section laborers at their established rate, and the sectionmen in question did not perform work of signal department helpers. Further, the sectionmen in question were not qualified, nor did they perform any service in respect to restoring broken circuits, nor did they have any part in the wiring of fences. They dug post holes, set posts, and placed the fence wire on the posts, all of which is part of their duties as section laborers, and the employes, to recover, must do so under the Agreement of Signalmen, instead of the Maintenance Agreement.

In the Signalmen's Agreement, the lowest class of labor is a helper, and he is a man who performs work generally recognized as helper's work. (Article 1, Rule 6, of Signalmen's Agreement.)

The exact issues in this claim have been before this Board on several occasions.

In Award No. 674, the issues were identical with the issues in this claim. In passing on the issues in that claim, Referee William H. Spencer said:

> "The carrier insists, however, that maintenance of way employes, when required to do work falling under another agreement, do not become 'signal helpers' within the meaning of the Signalmen's agreement. It cannot be denied that descriptively, workers who are assisting signal workers, whatever may be the class of work that they are performing at a given moment, are signal helpers in the absence of a showing that they are otherwise designated or described. Moreover these workers, when assigned as they were here, literally meet the description of a signal helper found in Section 5, Article 1, of the Sigmen's agreement. This provides, as previously pointed out, that 'a man assigned to assist other employes specified herein shall be classified as a signal helper.' This provision does not require that a signal helper shall possess skill, nor does it expressly or by implication

negative the implication that signal helper may be required to perform work of common labor incident to the more specialized work of signal service. It seems clear, therefore, both from the point of view of ordinary logic and from the point of view of the rules of the agreement that the claimants in this dispute were during the periods involved acting in the capacity of signal helpers.

"The carrier also argued that the claim is not well-founded because it is based on an unpermitted interpretation of that portion of Rule 46 of the Maintenance of Way Agreement, which provides among other things, that 'an employe 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;' that this applies merely to classifications of positions within the Maintenance of Way Agreement and not to positions outside that agreement; and that, in any event, the work in question was not of a 'higher classification' but precisely the same kind of work which the claimants were accustomed to perform daily.

"The purpose of this rule and of similar rules found in collective agreements is to protect such agreements and employes by restraining the carrier from moving employes from one type of work to another in an arbitrary manner. If the rule should be applied, as conceded by the carrier in the present dispute, to protect the employe against being moved from one type of work to another under the same agreement, a fortiori it should be applied to protect him against being moved from work under one agreement to work under another.

"The positions to which the claimants were moved, in the opinion of the Division, are of a 'higher classification' if for no other reason than that they carry higher rates of pay than the positions of section laborers. But quite aside from the matter of compensation and accepting the fact that the employes in the new assignment were performing the same kind of work they would have been performing under their normal assignments, the employes may have found work with a signal crew more congenial and occupationally more promising than the work with a section crew. It cannot be said, therefore, that serving as a signal helper, even though involving common labor, is not of a higher classification than that of a section laborer.

"The principle of departmentation of workers by crafts or classes and within classes and crafts has been severely criticized by many students of industrial relations. They charge that the strict observeance of this principle unduly hampers management and seriously interferes with business efficiency. There is, of course, some justification for these charges. On the other hand, recognition of this principle is essential to the preservation of orderly collective bargaining. To permit an employer arbitrarily to move employes from the scope of one agreement to the scope of another agreement would place all collective agreements at the mercy of the employer. If too great rigidity in the classification of employes comes about, the remedy under the Railway Labor Act is by negotiation and agreement."

The same results were reached in Award No. 675, where the section men worked under the section foreman as they did in this claim.

In Award No. 1544, the facts and issues are almost identical with this claim and the opinion of the Board sustained the claim.

Upon authority of Awards Nos. 674, 675, and 1544, the Board sustains the claim of the employes.

There is another fact which shows this work to be helpers' work. That is, the fence was originally built by the signalmen.

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 Carrier violated the provisions of the current agreement.

AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.