

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**J. Glenn Donaldson, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE ANN ARBOR RAILROAD COMPANY**

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

(1) That the Carrier violated the effective agreement when they failed to compensate Section Foreman L. Miller and Section Laborers S. Hill, R. Rose, and D. Goodrich, at the Telegraph Lineman's rate of pay for services on April 19, 20, 21, 25, 27, and on May 2, 1949;

(2) That the above listed employees be paid the difference between what they received at their own respective straight time rate of pay and what they should have received at the Telegraph Lineman's rate of pay on the days referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On the following dates, during the month of April and May, 1949, Section Foreman L. Miller and Section Laborers S. Hill, R. Rose and D. Goodrich, employed on the Ann Arbor Railroad, Section 24, Marion, Michigan, were assigned by the Carrier to work under the direction of a lineman in setting poles and trimming trees that were fouling the wires and generally performing duties that are functions of and attended by linemen. These dates are April 19, 20, 21, 25, 27 and May 2, 1949. Each claimant also rendered three (3) hours overtime service on May 2.

For the above listed service, these section laborers and their foreman, were paid at their own respective rates of pay.

The work of setting poles and generally performing duties of linemen was under the direction of one, Lineman Adams. Linemen are not covered by the Scope of the Agreement with this Brotherhood.

The Employees contended that the claimants should have received the Lineman's rate of pay for services rendered on the days in question.

Claim for pay for this service was filed with the Carrier and claim was declined.

The agreement in effect between the two parties to this dispute, dated October 1, 1940, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** As stated in the Employees' Statement of Facts, Section Foreman L. Miller and Section Laborers J. Hill, R. Rose, and

"CLASSIFICATION OF LINEMEN, ETC.

A—Rule 141

Linemen's work shall consist of building, repairing and maintaining wires either overhead, on supports, or underground, including feed wires and all outside wiring in yards."

"CLASSIFICATION OF GROUND MEN, ETC.

A—Rule 142

Ground men's work shall consist of assisting linemen in their duties, when said work is performed on the ground, but shall not include those who perform common labor in connection with the linemen or ground men's work." (Underscoring added.)

It will be observed that those who perform common labor in connection with linemen's or groundmen's work are not included within the classification of linemen and groundmen on The Ann Arbor Railroad Company.

Therefore, it is obvious that the claim presented on behalf of the foreman and laborers of Section 24 for payment at the lineman's rate in lieu of their regular rates on the dates set forth, account of being required to perform common labor in connection with the maintenance of pole lines, is without basis under the rules of the Agreement and must, therefore, be denied.

**OPINION OF BOARD:** Claimants, section foreman and section laborers, were assigned by the Carrier to work under the direction of a lineman in repairing a telegraph line. The work duties of claimants are reflected in Carrier's initial submission of which the following is typical:

"April 20—Sectionmen dug holes and assisted in setting poles. Section foreman sighted for lining of poles from track; I (lineman) sighted for lining with pole line from ground."

Upon another occasion, lineman reported, "Trucking about 25 poles with sectionmen, which were unloaded at various places between Marion and Temple. \* \* \*"

Rule 35 relating to Composite Service reads, in part, as follows:

"An employe working on more than one class of work on any day, will be allowed the rate applicable to the character of work preponderating for the day, \* \* \*."

Carrier denied claims for the lineman's rate of pay on stated dates when the work above described was performed. Carrier maintains that claimants merely performed common labor work and had similarly assisted linemen without extra compensation for many years previously. The Organization denies that sectionmen have performed this work in the past. Carrier then points out that it has had in its employment no more than two linemen at any one time for years and that it has no common labor classification in its Electricians' Agreement. We need not determine this disputed fact for the reason that past practice will not extinguish rights vested under an unambiguous rule.

We have, with few exceptions, upheld claims made under Composite Service rules identical to or similar to Rule 35, where section forces were called upon to assist higher rated employes in the performance of their work. Various tests have been applied in passing upon such claims.

The pertinent facts here in view of past awards are, that claimants worked under the supervision of a lineman, unquestionably with some tools of that craft, such as pike poles, for a purpose foreign to their ordinary duties which is patently not the rebuilding of telegraph lines, and in an assisting capacity, calling for some higher skill. These facts bring the case within the scope of Rule 35 and the cited awards.

The claimants ask to be compensated for the difference between their usual rate of pay and that of telegraph linemen. The usual allowance is the difference between their rate of pay and that applicable to the lowest classification of the craft assisted (Award 4757). However, this Carrier has excluded common laborers from the groundmen's classification, the lowest classification in the Electricians' Agreement, and it further appears from the submission that such classification is not used on this railroad. Under these circumstances, the linemen's rate must be used if there be none other lower in the referred to Agreement.

We disagree with Carrier that claims should be denied for April 19 and 25 because on these days the hours were equally divided between Maintenance of Way work and that of assisting linemen. Time was distributed upon both dates as follows:

Patrolling, 4 hours.....(Maintenance of Way)  
Surfacing, 12 hours.....(Maintenance of Way)  
Assisting Linemen, 16 hours.

The last named work clearly preponderated on the dates in question within the meaning of Rule 35.

The Employees withdrew their claims for May 2, 1949.

**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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement was violated.

#### AWARD

Claim (1) and (2) sustained for April 19, 20, 21, 25 and 27, 1949 for such of the claimants who assisted linemen on said dates as evidenced by payroll records.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.