

Award No. 10498
Docket No. SG-10370

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated Rules 4, 6, 28, and others of the current Signalmen's Agreement when it assigned the operation of a power bonding drill to Signal Helper H. J. Cavendish and refused to compensate him at the Signalman's pro rata rate of pay.

(b) Compensation be allowed Signal Helper H. J. Cavendish with headquarters at Gauley, West Virginia, for the difference between Signal Helper's and Signalman's pro rata rate of pay for the time he was assigned and used to operate the power bonding drill on February 8, 11, and 12, 1957, during the rail relaying program on the Hinton Division. [Carrier's File No. SG-113]

EMPLOYEES' STATEMENT OF FACTS: The claimant, H. J. Cavendish, on the dates embraced in the instant claim, was regularly assigned as Signal Helper with assigned headquarters at Gauley, West Virginia. Mr. A. T. Clinebell was the regularly assigned Signal Maintainer at Gauley, West Virginia, but on the dates embraced in this dispute was absent and the position was filled by Traveling Signal Mechanic C. R. Durrett.

On February 8, 11, and 12, 1957, the Carrier had a rail relaying program in progress on the Gauley, West Virginia, signal maintenance territory and, in addition to Traveling Signal Mechanic C. R. Durrett and the claimant, the Carrier assigned Signal Maintainer Cole and Signal Helper Reed from the Deepwater signal maintenance territory, and Signal Helpers Adkins and Kelly from its Division Signal Gang, to perform the signal work necessary on the Gauley signal maintenance territory.

On February 8, 11, and 12, 1957, Traveling Signal Mechanic Durrett instructed and assigned claimant Cavendish to operate a power-operated bonding drill, which work is recognized as Signalman's work covered by Rule 4 of the agreement, which pays Signalman's rate of pay.

OPINION OF BOARD: The claim in this case is simple and direct. Claimant Cavendish makes claim that it is the work of a Signalman in all instances to operate a power bonding drill to drill holes in rails for bonding purposes, and that such work is not the work of a Signal Helper; that the Agreement was breached in using Signal Helper Cavendish to operate a power drill in drilling for rail bonding on February 8, 11 and 12, 1957.

The Carrier contends that the operation of a power bonding drill was assigned to Cavendish for performance in accordance with all applicable rules and in accordance with the practice and custom of using a Signal Helper to operate a power drill down through the development of railroading and that, therefore, there has been no breach of the rules.

The rules involved are, as follows:

"RULE 4—SIGNALMEN, SIGNAL MAINTAINERS

"An employe assigned to perform work generally recognized as signal work shall be classified as signal or signal maintainer.

"RULE 6—HELPERS

"An employe assigned to assist other employes specified herein shall be classified as a signal helper. A signal helper when working alone, or two or more helpers working together, may perform work recognized as helpers' work. A helper as such shall not be assigned to do work recognized as that of other classes named in this agreement."

Rule 28 generally provides for an additional allowance in pay when a Signal Helper is assigned to perform the duties of a Signalman or Signal Maintainer or others.

It is obvious that the question cannot be determined by reference to the provisions of the Agreement alone. The parties to the Agreement have defined the coverage of the Agreement in terms of positions rather than in terms of work. Thus, of necessity, the Board must rely upon evidence outside of the Agreement itself in order to determine whether the work in question has been reserved traditionally and customarily to a particular classification covered by the Agreement. The burden of producing such evidence rests upon the Claimant who alleges the Agreement has been violated. (See Award 7338—Cluster).

The Petitioner has offered no competent evidence that the operation of a power bonding drill is the regular or exclusive signal work of a Signalman.

On the other hand the Carrier has furnished evidence that Signal Helpers have been used down through the development of railroading to turn the manual or hand-powered drills in drilling holes in rails for making rail bonds, and when power drills were introduced to do such work, mechanically, helpers have continued to do such drilling by the use of mechanically operated power drills.

The claim that drilling holes in rails becomes skilled work performable only by a Signalman or Maintainer simply because mechanical power instead of hand power is used will not hold up. An improvement in a machine does not of itself make a new or different operation. (See Award 8217—Beatty).

We must reach the conclusion that the work performed by the Claimant was work ordinarily and customarily assigned to a Signal Helper.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1962.