

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope and Classification Rules, when it assigned and/or permitted Signal Testman R. H. Harris to perform routine signal maintenance work which was not a part of his regular assignment as Signal Testman for the number of hours listed on the following days:

October 2, 1958 —	
Repairing ground rod connections .....	4 hours
October 2, 1958 —	
Rewiring signal heads D-2129 & 2199 Divernon to Nth Litchfield .....	4 hours
October 6, 1958 —	
Rewiring 1 L & 1 R Marker lamps Nth Litchfield....	6 hours
October 9, 1958 —	
Repairing parkway cable at Sargent Street Nth Litchfield .....	8 hours
October 10, 1958 —	
Repairs to flashers, Tyler Avenue, Litchfield, Ill. ....	4 hours
October 14, 1958 —	
Repairing and mouse proofing signal case .....	1 hour
October 15, 1958 —	
Repairs to flasher light units .....	1 hour
October 15, 1958 —	
Repair to ground rod connections .....	1 hour

patcher for instance deals with work involving the very functions inherent in dispatching trains) or by the accumulation of functions gradually deposited with the position. The work becomes as 'recognized.' The sum total of this work then obtains a certain identity known as a position. It is not rigid but somewhat flexible. There may be given to it or taken away functions which do not change its identity, just as a finger or an ear taken from a human being does not change his identity. Functions which are normal and incident to it may be added or taken away without changing the nature or type of position. As long as the functions are 'in character' the position is not changed—volume of work itself being only a secondary criterion, although there may be cases where a difference in amount or degree may mean a difference in kind." (Emphasis ours.)

This Board has stated in its awards that it is fundamental that one making a claim must substantiate it and show facts which constitute a violation of his rights (Third Division Awards 8084, 6391, and others). The Claimant, Signalman J. R. Jackson, was furloughed at the time the instant dispute arose, and subsequent thereto resigned from the service of the Carrier. He did not occupy a position of Signal Maintainer on the dates the Employees allege an agreement violation occurred and had no contractual right to any work involved in this dispute. Under such circumstances no new position was established, no overtime was necessary or worked, and he was in no position to assert a claim as his contractual rights were not trespassed upon.

The claim before this Board is without merit, and it accordingly should be denied.

**OPINION OF BOARD:** There is no dispute that the work listed in the Statement of Claim is within the Scope Provision of the Agreement.

The issue is whether Article I—Classification of the Agreement reserves exclusively to each job classification, listed and laconically described therein, certain work. Otherwise stated, is it a violation of the Agreement for a higher classified employee, in the collective bargaining unit, to perform work, in the course of or incidental to his duties, which is usually performed by an employee in a lower classification?

The record herein supports a finding that the work listed in the Statement of Claim has been historically performed by Testmen under the attendant circumstances. While this alone would support a denial award, we feel it is incumbent upon us to dispose of the broader issue as to interpretation and application of Article I—Classification of which the following Rules are pertinent:

#### **"RULE 101**

(a) Testman: An employee who is assigned to and whose duties are the inspection, special adjustment and field testing of appliances or apparatus outlined in the scope of this agreement.

#### **RULE 106**

Signalman: An employee assigned to perform signal work as outlined in the scope of this agreement."

The classifications, of which there are eleven, are not job descriptions. This is particularly evident in Rule 106, *supra*. It is apparent that they were established to effectuate and protect the employees' rates of pay, promotions and seniority rights, elsewhere provided for in the Agreement. They are not exclusive grants of work to each classification.

The Scope Provision of the Agreement reserves the work encompassed therein to employees in Carrier's Signal Department as a whole. That it was within the contemplation of the parties that the work could be assigned to or performed by any employee in any classification in the Signal Department, with one exception, is evidenced by Rule 220, which reads:

"When an employee is required to fill the place of another employee receiving a higher rate, he shall receive the higher rate, except that an assistant signalman required to relieve another assistant signalman receiving a higher rate will receive his own rate. An employee required to fill temporarily the place of another employee receiving a lower rate will not have his rate reduced."

The only expressed exception—which in effect precludes implying any other exception—is found in Rule 110, which reads:

"Signal Helper: An employee assigned to perform work generally recognized as unskilled work covered by the scope of this agreement. Signal Helpers shall not be permitted to perform work recognized as that of other classes as named in this Article."

Of course, the Carrier's assignment of work may not be made in derogation of the employees' contractual rights provided for in other provisions of the Agreement.

For the foregoing reasons, we find that the classifications are not an exclusive grant of work to each classification; but, instead, were formulated for the purpose of establishing rates of pay for work performed and the employees exercise of their contractual seniority and promotion rights. We will deny the claim.

Out of an excess of caution, to avoid any misconception, this Opinion in no way deviates from or affects our established principle that the classification provisions of an Agreement are an aid in determining the work within the ambit of a general in nature scope provision.

**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 Carrier did not violate the Agreement.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June 1964.

DISSENT TO AWARD 12668, DOCKET SG-11832

Although fully aware that a testman is an employee who is assigned to and whose duties are the inspection, special adjustment and field testing of appliances or apparatus outlined in the Scope of the Agreement, the Majority, consisting of the Referee and the Carrier Members, nevertheless sanctions the testman's performance of repair work such as is contemplated by Rule 106.

Reasonable minds would hardly place the repairing of ground connections, rewiring of signal heads, repairing of flashers, etc. in the category of inspecting, special adjustment and field testing of appliances. Herein the Majority errs.

Further error is committed by the Majority when under the guise of some obligation to dispose of a broader issue they use Rules 220 and 110 to explain away every classification rule in the book.

The effect of this Award is to destroy rules rather than interpret and apply them; therefore, I dissent.

G. Orndorff  
Labor Member