

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of C. L. Chess for the signalman's rate of pay of 82 cents per hour for work performed on September 15 and 16 and October 13 and 14, 1936."

STATEMENT OF FACTS: The employes stated the facts as follows:

"On September 15 and 16, 1936, C. L. Chess was required to string some temporary cable and tie it on signal poles; he also removed wires and cable on old pole and assisted in transferring same to new signal pole. Again on October 13 and 14, 1936, Mr. Chess was required to climb poles and string wire for Freedom Road Flashers at Ravenna, Ohio. Chess received only the signal helper's rate of pay for this service."

The carrier stated the facts as follows:

"C. L. Chess is regularly assigned as a Helper in Signal Construction Gang working under Signal Foreman R. A. Thomas. His name is reported on Mahoning Division Signalmen's Roster as a Helper with a date of February 20, 1929, and as Assistant Signalman with a date of January 6, 1930, but during the periods in question he was regularly employed as a Helper, as provided for under Rule 30 of Rules and Rates of Pay for Signal Department Employees, effective November 1, 1935."

POSITION OF EMPLOYEES: "That Mr. Chess should have been compensated at the rate of 82 cents per hour for the reason that all of the work in question is generally recognized as signalmen's work on all of the railroads throughout the country and comes within the classification and duties of a signalman as provided in Rule 3 of Article I of the agreement dated November 1, 1935. Rule 3 reads as follows:

'An employee assigned to perform work generally recognized as signal work shall be classified as a signalman or signal maintainer.'

"Our claim that the work in question does not come within the classification of signal helper is best proven by the language of Rule 5 of Article I. Rule 5 reads:

'An employee assigned to help signalmen, signal maintainers and other employes classified herein, performing work generally recognized as helper's work, shall be classified as a signal helper.'

"It will be noted that Rule 5 refers to helper's duties as work generally recognized as helper's work; therefore it cannot be claimed that the string-

which would consume approximately 10 minutes. All of the other time he performed work on the ground as a Helper. On September 16, 1936, the same move was made by a portion of the gang to Youngstown and they were to remove an old cable pole. On this old cable pole the message wire was 'dead ended' and the cable wire in a wood terminal box. The message wire had to be removed from the old pole to the new pole and Chess climbed the old pole and released the message wire, and also took down the old terminal box, which consumed approximately two hours time. All of the rest of the day he was working on the ground heating solder, removing old material and other miscellaneous duties.

"It is the position of the Railroad Company that Signalman's Helper Chess has been properly compensated at his regular Helper's rate of pay and that this claim for a day's pay at 82 cents per hour as a Signalman is not justified by any rule nor has the General Chairman representing the Signalmen in handling this matter with the management cited any rule that would sustain this claim."

OPINION OF BOARD: In support of their contention that C. L. Chess is entitled to the signalman's rate of pay for work performed on September 15 and 16, and October 13 and 14, 1936, the employees submit that Mr. Chess was employed as a helper in the Signal Department of the Erie Railroad on February 20, 1929, and advanced to a position as an assistant signalman on January 6, 1930, and on the dates specified in this claim held seniority as an assistant signalman, but had been scaled back to a classification as helper. According to the evidence submitted by the employees Mr. Chess had not held seniority as a journeyman signalman but was qualified and had performed work in that classification.

On the dates specified in this claim Chess, classified as a helper, was sent out with a signal gang, first on September 15th and 16th, to perform work in connection with grade crossing elimination at Youngstown, Ohio, and on October 13th and 14th to assist in installing new line wire at Ravenna, Ohio; and in both instances, according to the contentions of the employees, advantage was taken of the man's knowledge and experience, and, while employed as a helper and at a helper's rate of pay the work he actually performed was that of a signalman and for which claim is made for signalman's rate of pay.

From the evidence submitted the gang performing the work in which Chess was engaged was a part of a larger crew made up of a foreman and several signalmen and helpers, but in each instance only one man classified as a signalman was assigned to the crews of which Chess formed a part.

It is difficult and for that matter impossible to determine the entire detail of the work performed by the several individuals in these gangs, but the fact is evidenced that on the poles the line or wire work of Kohler and Chess at Youngstown and that of Chess and Chess at Ravenna, in their respective classifications of signalmen and helper, was of the same class and that these men worked together, or on consecutive poles, at work of an identical character.

As to the work of these men off the poles, and with the possible exception of the cement foundation work at Ravenna, inasmuch as these men were working together on the poles at work classified as that of signalmen there is little doubt but that at least a definite and major proportion of the work on the ground was that of signalman in preparation for the work that was to be done on the poles.

In view of these conditions and the facts in evidence that the employee classified as a signalman and the employee classified as a helper were performing work of an identical character at a considerable distance apart and independent one of the other, so far as the preparations for and the handling and stringing of the wire is concerned, it is the opinion of the Board

that the employe classified as a helper should be reclassified as a signalman on the dates indicated in accordance with Rule 3 of Article I of the agreement between the parties, effective November 1, 1935.

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 employe involved in this dispute are respectively carrier and employe 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 employe be paid the difference between the amount received and the signalman's rate of pay for the days indicated in the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 19th day of October, 1937.