Award No. 565
Docket No. SG-567

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM

STATEMENT OF CLAIM: "Claim No. 1: That Arthur Cleeton, W. T. Weldon, M. W. Tilton, Gerald McGaugh and C. D. Feeney, the oldest signal helpers on the Eastern Kansas Division seniority district, who were out of service by reason of force reduction, be compensated at the helper's rate of fifty-three cents per hour for all hours worked by Joe Iry, Frank Traylor, S. Smith, Marvin Hanson and Lewis Jones, who were employed as 'laborers' at the rate of thirty-five cents per hour in signal gang Number 1 under the supervision of Signal Gang Foreman W. L. Phillips, between the dates of November 19, 1935, and February 22, 1936, and thereafter so long as this condition existed."

"Claim No. 2: That it is not permissible under the provisions of the agreement between the Atchison, Topeka and Santa Fe Railroad Company, The Gulf, Colorado and Santa Fe Railroad Company, the Panhandle and Santa Fe Railroad Company and its employes represented by the Brotherhood Railroad Signalmen of America, effective February 1, 1929, for the Carrier to employ persons to perform work in connection with the installation, construction, repair and/or maintenance of signal apparatus, at a less favorable classification and rate of pay than that which is provided for in said agreement."

EMPLOYES' STATEMENT OF FACTS: "Under date of November 19, 1935, Joe Iry, Frank Traylor, S. Smith, Marvin Hanson and Lewis Jones were employed in Signal Gang No. 1 on the Eastern Kansas Division and continued in the service of the Carrier until February 22, 1936, a part of the men remaining in service until a later date.

"The classification under which these men were employed was that of 'laborer' and they received a rate of thirty-five cents per hour.

"During the time these men were employed several men holding seniority in the helpers' class on the Eastern Kansas Division seniority district were out of service because of force reduction. The five oldest in point of seniority were Arthur Cleeton, W. T. Weldon, M. W. Tilton, Gerald McGaugh and C. D. Feeney.

"The lowest classification as set forth in the Agreement between the Atchison, Topeka and Santa Fe; Gulf, Colorado and Santa Fe; Panhandle and Santa Fe Railroad Company and its employes represented by the Brotherhood of Railroad Signalmen of America, effective February 1, 1929, is that of 'Helper.' This rule appears as Section 5 of Article I, designated as 'Classification.'"

"It is to be noted that in the definition of a helper (Section 5, Article I), there is no inhibition against the carrier employing laborers to perform certain work, such as that outlined above in connection with the submission of carrier's exhibits A, B, C, D, E, and F, incident to the installation or maintenance of signal apparatus. It cannot be denied that on the properties of this carrier it has been a long standing practice to use laborers for laborers' work when needed in signal gangs. The laborers' work involved in this dispute had no real relation to what constitutes signal construction or practice.

"That this is only one of other attempts to foist an unnecessarily expensive practice on the carrier in connection with laborers' work is evidenced by that part of Decision No. 2493 of the United States Railroad Labor Board, which disposed of the argument of the employes' representative in the following language appearing in the opinion in the decision:

> 'The Board recognizes . . . also that certain service justifies the classification and rating of laborer. . . .'

The United States Railroad Labor Board stated in the opinion in Decision 2493 that:

> 'The dispute as submitted to the Railroad Labor Board is of a general character and does not deal with the specific duties required of any one individual or position, but rather with the duties required of all employes of the signal department classified and paid as laborers.'

"The United States Railroad Labor Board indicated that the question should be disposed of in conference between the parties, and that if they could not agree, a specific dispute, with supporting data and evidence to enable the Board to pass upon the merits thereof, should be submitted to the Board. The practice of the carrier was not changed up to the time the Labor Board went out of existence in May, 1926, yet no specific dispute was submitted to the Board, with supporting data and evidence to enable the Board to pass upon the merits thereof, and now more than eleven years later the suggestion of the Labor Board has not been carried out.

"The employes had the opportunity at any time between the effective date of the National Agreement, effective February 1, 1920, and the negotiations of rules under Labor Board Decision No. 119 resulting in the agreement effective February 16, 1922; between the effective date of the latter agreement and Decision No. 1538 of the Labor Board effective February 1, 1923, under which latter decision only the rules governing payment for Sunday and holiday work and for overtime were submitted to the Labor Board; between June 5, 1924, the date of Labor Board Decision No. 2493 and the date of this claim, which was first presented to this Company on February 23, 1936, during all of which time the same rule; viz., Section 5, Article I, of the current schedule, and the same practice thereunder had been in effect, to confer and endeavor to agree with the carrier on a line of demarcation between a laborer and a helper, yet all this time passed, without any attempt being made to confer with the representatives of the carrier in an endeavor to show that the established and recognized practice should be changed, at least to a certain extent, to comport with the desires of the employes.

"In conclusion, the carrier contends that the issue raised in this submission is one which can only be determined by conference between the parties, and in the event no agreement can be reached in conference the matter is one which should be submitted to arbitration under the Railway Labor Act. It is a negotiable question purely and simply."

An agreement bearing date of February 1, 1929, is in effect between the parties.

OPINION OF BOARD: The issues involved in this case are fundamental, and go to the very heart of agreements governing wage rates and working

conditions. The parties have testified that the rules of the agreement here at issue were negotiated through the processes of collective bargaining.

The employes contend that the classifications therein (Sections 1, 2, 3, 4, and 5 of Article 1) apply to Signal Department employes "performing the work generally recognized as signal work," and that a reasonable definition of the work to be done by each class is set forth and that the classifications cover and apply to all employes of the craft or class known as Signal Employes.

There is no classification of "Laborer" in the agreement, no wage rate for such a class, nor is there work of the Signal Department stated that may be performed by employes classified as laborers.

The Carrier contends that the agreement permits the employment of laborers in the Signal Department of its Lines, since no definite prohibition of their employment is set forth therein; that the work performed by the employes involved in this dispute is generally recognized as laborers' work. Also, that long continued practice should be recognized as compelling the employes to seek a modification of the agreement through negotiations if they desire that employment of laborers to perform signal work shall be discontinued.

On the other hand, the employes vigorously deny that there has been any such long continued practice, and, on the contrary, assert that it was stopped when protested in 1922, again in 1930 when it was renewed for a short period, and again immediately in 1935 by the case involved in Award 88. It was, of course, within the Carrier's ability to produce definite evidence of the practice from payrolls or other records in their possession. However, in the view the Board takes of the matter, the practice would be of no moment.

It is asserted, on behalf of the management, that Railroad Labor Board Decision 2493 is controlling. This decision, however, decides practically nothing. It merely holds that the Board recognizes that there is certain service justifying the classification and rating of "Laborer," but this is not an interpretation of the agreement. On the contrary, it would appear that if there was to be any such classification, it would necessarily require negotiation of a rating of it. It should be borne in mind that that Board had authority not only to interpret, but to change agreements.

On behalf of the Carrier, vigorous exception was taken to the consideration of claim No. 2 upon the contention that it had not gone through the usual channels of conference between the Organization and the management. It is difficult to understand such a contention when it is quite obvious that the question had been actively debated between the parties each time the practice was attempted, and was understood by both parties to be involved in Docket SG-87, Award 88, although the decision in that case was placed on narrower grounds. There is no set form of presentation in handling the matters, but it would be ridiculous to say that the subject had not been thoroughly debated by the parties. That there may have been no more formal denial of the claim by the carrier than its action in instituting the new attempt here involved following the Rhea decision, cannot be understood to be less than a direct denial of the claim.

The point apparently involved in the objection is an apprehension expressed on behalf of the Carrier that the allowance of this claim would have most far-reaching effects, disturbing long-settled practice, crossing departmental lines. It is claimed to be apprehended that the allowance of this claim would involve an insistence on the part of the Signalmen of the right to do even such work connected with signal affairs as the Stores Department, Mechanical Department, Maintenance of Way and Construction Departments now do and always have done. The employes concede they are making no such claims. It is welll recognized that these other departments do, and always have done work connected with signal work. There is no jurisdictional

dispute concerning the lines of demarcation in this respect. All that is here claimed for the Signalmen is that work done in its department, generally recognized as signal work, is subject to its agreement.

The position of the Carrier is that is can, as it did here, subdivide the work now performed by helpers, push what it regards as the higher class of that work up onto the higher classifications of the agreement, and take the remainder, which it would classify as laborer work, without the agreement. By the same process of reasoning, it could take work now being done by signalmen and employ men under the classification "Electricians," "Machinists," or what not, at lower rates than those applicable to signalmen, and insist that in the absence of any written prohibition in the agreement such employes were not subject thereto, and that the Carrier was consequently within its rights. The mere statement of the proposition defeats it. If such were the case, the agreement would amount to nothing at all.

If, as the Labor Board thought, there is room for a classification "Laborers," it is a subject upon which the Carrier would be required to seek negotiation. However, from an examination of the Labor Board file, it appears that what seemed to be in controversy there was the utilization of Maintenance of Way labor for some assistance to signal gangs. This practice still subsists, and is not in controversy here.

Numerous awards by this Division and by other Divisions of the Board have held that work covered by an agreement cannot be performed by employes not covered by the same agreement, and that employes embraced in an agreement shall be returned to service in the order of their seniority rights to perform such work as is available, to the exclusion of junior or new employes. Consequently, in the absence of any express agreement to the contrary, it must continue to be held that all employment of the class covered by an agreement must be deemed to be embraced therein.

The Carrier violated the agreement by its failure to recall to service the senior furloughed employes for performance of the signal work in question. The Carrier also violated the agreement by employing laborers to perform signal work.

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 agreement by its failure to recall to service the senior furloughed employes for performance of the signal work in question. The Carrier also violated the agreement by employing laborers to perform signal work.

AWARD

Claim No. 1: Sustained.

Claim No. 2: Sustained to the extent indicated by Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of January, 1938.

Serial No. 9

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION No. 1 TO AWARD No. 565, DOCKET No. SG-567

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America

NAME OF CARRIER: Atchison, Topeka & Santa Fe Railway System

Upon application of the representative of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

> The award, based upon the claim as submitted to the Division and upon the existing agreement, refers to the Opinion as a part of the award, and thereby gives interpretation which it is felt by the Division covers the questions raised in your letter.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1938.