

Award No. 634

Docket No. SG-645

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "That the carrier is violating the provisions of schedule rules in respect to the rates paid monthly rated gang foremen; that the rate of such employees should be determined as provided for in Article 5, Sections 3 and 4 of the current agreement, and that Mr. W. M. Jordan and other gang foremen, being paid on a monthly basis, be paid the difference between the monthly rate received and the monthly rate established by application of Article 5, Sections 3 and 4, referred to above, for all time served as gang foremen."

EMPLOYES' STATEMENT OF FACTS: "The classification of gang foreman is specifically provided for in Article 1, Section 4, of the current agreement governing rates of pay and working conditions of signal department employees on the Texas and New Orleans Railroad.

"Article 5 of said agreement sets up the rates of pay for gang foremen and other employees covered by said agreement, both as to hourly and monthly rates.

"Mr. W. M. Jordan and others bid in and were assigned to positions as gang foremen but were paid an arbitrary monthly rate of \$186.00 per month which is not in accordance with the monthly rate established for said class under the provisions of Sections 3 and 4 of Article 5 of the current agreement.

"The Management takes the position that the classification of gang foreman does not come within the scope of current agreement between the T. & N. O. Railroad Company and the Brotherhood of Railroad Signalmen of America and therefore is at liberty to establish any rate it desires for said class of employees."

EMPLOYES' POSITION: The provisions of the current agreement (Effective May 1, 1924) and particularly the following quoted rules thereof support the claim of the employees involved in this case:

"PREAMBLE

Pursuant to the requirements of the Transportation Act of 1920, and Decision 119, Decision 707 and Decision 1538 of the United States Railroad Labor Board, the following rules applicable to Signal Department employees, covered by the classifications shown in rules 1 to 5 inclusive, represented by the Brotherhood Railroad Signalmen of America, are placed in effect May 1st, 1924, on these Lines."

"SCOPE

"These rules shall apply to employees classified in Article I, performing the work generally recognized as signal work."

document whatsoever, and further, that Article V, Section 4 which refers to the establishment of a monthly rate for certain employees on the basis of 365 eight-hour days does not apply and has never been applied to gang foremen; the management has always recognized 204 hours per month as being the basis of their rate of pay rather than the basis set out in Section 4. Article V, Section 4, covers only the two classes of employees specifically mentioned therein, that is employees assigned to the maintenance of a section who do not return to home station daily and employees regularly assigned to perform road work,—these being employees rendering a type of service which keeps them moving from place to place and who when paid an hourly rate may under certain circumstances have their compensation considerably enhanced by the payment of overtime.

Even if the position of monthly rated gang foremen came within the scope of the current signalmen's schedule the claims and contention of the organization herein would have to be denied because Article VI, which provides for the method of handling grievances, has not been complied with.

There is in evidence an agreement between the parties effective May 1, 1924.

OPINION OF BOARD: The agreement between the parties to this dispute includes the position of gang foreman. The basic rates of pay on an hourly basis for the various classes of employees including gang foremen, are established by Article V of said agreement; provision is also made in Article V for the permissive establishment of rates of pay on a monthly basis. There is no requirement that employees occupying the position of gang foreman be paid on a monthly basis, but if the carrier elects to establish a monthly rate of pay for a position of gang foreman it should be in accordance with the provisions of Article V, Section 4. The evidence shows that the claim was not presented to the carrier until June 10, 1937.

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

That each of the employees in the Signal Department on the lines of this carrier in the position of gang foreman on the basis of a monthly rate of pay shall be paid the difference between the rate of \$194.67 and \$186.00 or \$8.67 per month for such time as each said employee worked as a gang foreman on the basis of a monthly rate from June 10, 1937, to August 1, 1937, and the difference between \$206.83 and \$196.00 or \$10.83 per month for such time as each such employee worked as a gang foreman on the basis of a monthly rate subsequent to August 1, 1937.

AWARD

Claim sustained to extent indicated by Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1938.