

Award No. 1134
Docket No. SG-1162

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: "Protest against the use of Maintenance of Way Department track forces to dig and back-fill trenches for installation of Parkway cable used exclusively in connection with the operation of Telegraph and Signal Department equipment."

EMPLOYEES' STATEMENT OF FACTS: "On November 1, 1938, one track foreman and four track laborers were engaged for eight (8) hours, and one other trackman for four (4) hours, in the work of digging and back-filling a trench for the installation of Parkway cable at signal locations 1715 and 1716 near Ross, Ohio. All the work in connection with the installation was performed by Telegraph and Signal Department forces, consisting of three mechanics and one helper, with the exception of the digging of the trench and the back-filling of it after the cable had been laid. On this work they were assisted by the Maintenance of Way Department track forces.

"There were a sufficient number of Telegraph and Signal Department employes available to perform the work and it was not necessary to have the assistance of trackmen.

"The Parkway cable was a heavy armored cable containing single and/or individual wires used to replace defective wires in connection with the signal circuits. Individual cables containing one heavy wire were used to connect the track (rails) to the signal instruments, while a larger cable containing several smaller wires was used for other circuits. When in use all wires are used for the operation of signal circuits and apparatus.

"The work of digging and back-filling the trench is considered the unskilled work of the Telegraph and Signal Department and is generally recognized as helper's work as referred to in Article 5 of the current agreement. It was necessary to complete the digging of the trench, install the wires and back-fill the trench before leaving the job as open ditches must not be left under or about the tracks.

"The Parkway cable was used exclusively in connection with the operation of signals and their appurtenances and the installation thereof was the ordinary work of renewal or maintenance. There was no emergency in connection with the renewal or installation."

POSITION OF EMPLOYEES: "It is the position of the Brotherhood that under the provisions of the current agreement between the Pennsylvania Railroad and its employes represented by the Brotherhood of Railroad Signalmen of America, that the carrier does not have the right to assign employes to perform work generally recognized as signal work in connection with the installation, construction, repair and/or maintenance of its signal apparatus,

"It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Article V of the 'Regulations and Rates of Pay' and to decide the present dispute and to determine the said claim in accordance therewith.

"The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of 'grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.' The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

"V. The Claimants are not entitled to the compensation claimed.

"The Carrier has shown that under the agreement the Claimants, as furloughed Telegraph and Signal Department helpers, are not entitled to demand that they be permitted to dig and back-fill trenches in connection with the installation of Telegraph and signal equipment and that under the agreement they are not entitled to compensation when they performed no service.

"Therefore, the Carrier respectfully submits, in the instant case, that when laborers were used to dig and back-fill trenches, as described in the Statement of Facts there was no violation of the provisions of the Schedule, or of any agreement between the Carrier and its employes, represented by the Brotherhood of Railroad Signalmen of America, and respectfully requests your Honorable Board to dismiss the claim of the employes in this matter."

OPINION OF BOARD: The Brotherhood of Railroad Signalmen of America has submitted a "Protest against the use of Maintenance of Way Department track forces to dig and back-fill trenches for installation of Parkway cable used exclusively in connection with the operation of Telegraph and Signal Department equipment," a procedure which the Pennsylvania Railroad Company followed in the instance prompting the complaint. Greater details as to facts than we undertake to state, as well as the contentions of the parties, appear in the matter preceding this "Opinion."

It is informing to observe that the signalmen's organization has no classification below "helpers," while in the maintenance of way organization there is classification of "laborers." Helpers enjoy a higher wage rate than do laborers. It follows that by employing the labor force of the maintenance of way organization rather than signalman helpers "to dig and back-fill" the trench involved, the carrier accomplished a wage saving. Indeed, the brotherhood intimates that that is what prompted the carrier to make use of the track force, while the carrier, not gain-saying the fact of economy involved, insists the work came within the scope of the trackmen's duty, or, in any event, not within the exclusive duty of the helpers. The question is not free from doubt. It developed in the course of the presentation, that, on occasion, required railway service so partakes of the duties of more than one of the brotherhood organizations that the line of demarcation rests in uncertainty. Conceivably, the job of digging a trench, and re-filling it, might occur under circumstances which would warrant the conclusion that only helpers in the signal force should do the work, while, on the other hand, the job might as readily be thought to be the work of the track force of the maintenance of way organization. A convincing illustration of either does not occur to us; nor can we confidently catalogue the present problem.

In digging the trench beneath three main line tracks of the railroad, as was done, and its extensions otherwise, in the circumstances appearing,

potential disturbance of the roadbed at vital points challenged the carrier's concern to a degree not lightly to be regarded, and the back-filling partook of the same potentialities. Throughout the process, as we are persuaded, responsibility for the finished job in relation to the trench proper—digging and back-filling—rested on the track force. At least, the resolution of the carrier to that end is not so unreasonable as to warrant us in concluding otherwise. The awards cited, although we do not pause to review them in detail, have helped us in our thinking; but none of them, as our study convinces, is precisely in point. The problem here rests upon unique facts, and only upon those facts is our determination based.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing theron, 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 did not violate the agreement invoked by the brotherhood.

AWARD

The protest is disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1940.