

Award No. 1434
Docket No. SG-1493

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "That the railway company violated the current agreement by classifying and compensating J. L. LaCour, Louis Favron, Theodore Favron, Louis Dufrene, E. W. Haley, and Joe Bonobana as 'laborers' instead of as 'helpers' during their employment in the signal construction gang since about December 1, 1939; that the work which was assigned to and performed by these men is helpers' work as provided in the current agreement; and that they be paid the difference between the rate received, 39 cents an hour, and the established and agreed-to helpers' rate for the hours worked (as shown by pay rolls) in the signal gang subsequent to their employment on or about December 1, 1939."

EMPLOYES' STATEMENT OF FACTS: "On about December 1, 1939, the Texas and Pacific railway created a road service gang to perform signal construction and repair work. The positions in such gang were not immediately bulletined for seniority choice and the General Chairman of the Brotherhood wrote the Signal Engineer on December 14, 1939, asking that bulletins be issued. On December 15, 1939, the following bulletin was issued:

'BULLETIN No. 3

The following positions, now temporarily filled, are open in construction road service until signal construction and repair program is completed:

- 1—Signal Foreman
- 1—Leading Signalman
- 3—Signalmen
- 5—Assistant Signalmen
- 5—Signal Helpers

Bids will be received in my office up to and including December 26, 1939.

E. P. Weatherby
Dallas, Texas, December 15, 1939.'

"Assignment of applicants to the positions was made by the following notice:

'SIGNAL EMPLOYEES

Referring to my Bulletin No. 3—December 15th. The following assigned:

Signal Foreman
N. H. Stroud

"NOTE: This agreement does not cover common laborers, which may be used in excavation, concrete work, loading or unloading of material. All other work shall come under the terms of this agreement."

"From this it will be noted that the Organization representatives recognized the right of the Carrier to employ common labor in connection with certain work in the signal department, which was not covered by the Scope Rule of the Agreement.

"The change proposed by the General Chairman was not agreed to for the reason that it proposed to limit the work that might be required of laborers beyond that which had theretofore been required.

"It is the position of this Carrier that the Organization representatives are endeavoring to secure a rule through your Board which they failed to secure by direct negotiations with the Carrier.

"The employes listed in this claim were not required to perform work other than that which has always been required of laborers on signal gangs.

"In conclusion would call the Board's attention to its Award No. 1134, which we feel sustains our position in this case, as well as the evidence above submitted."

OPINION OF BOARD: The first question for decision concerns interpretation of a provision of the contract. The Preamble thereof has a classification of the employes covered thereby. They are thus enumerated:

- (a) Signal Foreman
- (b) Signalman, Signal Maintainer
- (c) Leading Signalman and Gang Foreman
- (d) Leading Maintainer
- (e) Assistant Signalman, Assistant Signal Maintainer
- (f) Helper

Then follows this "NOTE": "This agreement does not cover common laborers."

Unsound is the argument for the employes that that "NOTE" deprives the carrier of right to use "common laborers" in its signal department. All it means is that common laborers are not parties to, and so are neither bound by nor protected by the Agreement. It certainly cannot be read to the effect contended for by the employes which is that "this Agreement shall be construed as a prohibition of the carrier's use of common laborers in the signal department."

In this respect, the Agreement between the Texas and Pacific Railway Company and its signalmen is unique. Such a provision is said to be absent from the Agreements on all other railway systems. That distinguishes, and makes inapplicable, the rationale of all such awards as No. 1291.

Remains for decision the question whether the claimants, during the time covered by their claims, were performing the work of helpers or common laborers.

The digging and back-filling of trenches for the installation of signal cables, with nothing more, is plainly that of a common laborer. It is pick and shovel work and in any other department of railroading would usually be considered common labor. It should be so considered under this Agreement.

The attaching and marking of wire identification tags in the signal department is the work of a helper rather than that of a common laborer. It strikes us that the work of painting signals is in the same category. Even a trench digger while doing that work may possibly render some service incidental thereto and therein, if there were enough of it, be classed as a helper.

With this somewhat general expression of opinion by the Third Division it should not be difficult, if the case is returned to the property, for the parties to reach a satisfactory settlement.

In docket and argument, efforts made to reach a settlement have been mentioned. We decline to consider them for or against either party. But they do indicate a commendable degree of accommodation which, if continued, should assure that we will hear no more of the claim.

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 to the extent indicated, there has been a violation of the Rule in assigning helper's work to common laborers.

AWARD

Claim sustained to the extent stated and the case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1941.