

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

E. L. McHaney, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE AND HUDSON RAILROAD

STATEMENT OF CLAIM: "Claim of Employees' Committee that trackmen listed below, employed at Oneonta, Susquehanna Division, called upon to assist signal maintainers in repairing and reconditioning telegraph lines on November 5th and 6th, 1939, shall be paid the difference between what they received as trackmen—48¢ per hour—and the rate of pay applicable to signal maintainer helpers—59¢ per hour—for the time engaged in such service as follows:

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|---------------------|---|
| Harry P. Hunt | November 5th—4 hr. overtime November 6th—8 hr. overtime and 8 hrs. straight time. |
| Fred Sandike | November 5th—4 hr. overtime November 6th—8 hr. overtime and 8 hrs. straight time. |
| Claude B. Goodnough | November 5th—4 hr. overtime November 6th—8 hr. overtime and 8 hrs. straight time. |
| Tony Krivosic | November 6th—8½ hr. straight time |
| Ludwick Sadlek | November 6th—8½ hr. straight time |
| Jos. Balnis | November 6th—8½ hr. straight time |
| Abraham Sperbeck | November 6th—8½ hr. straight time |
| George A. Phillipe | November 6th—8½ hr. straight time |
| Thomas McClusky | November 6th—8½ hr. straight time." |

EMPLOYEES' STATEMENT OF FACTS: "Trackmen Harry P. Hunt, Fred Sandike and Claude B. Goodnough were called by the Train Dispatcher at 8:00 P. M., November 5, 1939, to assist the signal maintainer to repair telephone and telegraph lines damaged by a snow and ice storm. They worked from 8:00 P. M., November 5th, to 7:00 A. M., November 6th, for which period they were paid at overtime rate; worked from 7:00 A. M. to 3:00 P. M., November 6th, for which period they were paid at pro rata rate; and from 3:00 P. M. to 4:00 P. M., during which hour they were paid at time and one-half rate.

"Tony Krivosic, Ludwick Sadlek, Jos. Balnis, Abraham Sperbeck, George A. Phillipe, and Thomas McClusky were called by the Electrical Foreman, Theodore Oumette, likewise to assist the Signal Maintainer in repairing telephone and telegraph lines, at 7:00 A. M., November 6th, and worked until 4:30 P. M. for which period they were paid for 8½ hours at pro rata rate.

"All of these men were paid at regular trackman's rate—48¢ per hour."

OPINION OF BOARD: The question for decision in this case is whether Harry P. Hunt and eight other trackmen, members of the Brotherhood of Maintenance of Way, employed by the Delaware and Hudson Railroad, shall be paid for certain hours of work performed by them on November 5 and 6, 1939, at the rate of pay applicable to signal maintainer helpers—59¢ per hour, rather than 48¢ per hour which was paid them as trackmen.

The nine trackmen involved in this claim were called upon and assigned to assist the signal maintainer in repairing the telephone and telegraph lines that had been damaged by a heavy snow and ice storm, work outside their regular course of duty. It was emergency work.

Rule 19 of the Agreement between the Brotherhood and the Carrier provides:

“Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed.”

It is not disputed that these trackmen performed the number of hours of work claimed in helping rebuild the signal lines by setting poles, stringing wire and such other work as they were directed to do in re-establishing the lines. They were paid for these hours of work at the regular trackmen's rate. Does the above rule apply?

The Carrier says these trackmen “were directed to temporarily handle laboring work in connection with the restoration” and “did not fill positions of higher rated signal employees.” We cannot agree. While the work performed by them was labor, it was labor outside the scope of their usual and ordinary duties as trackmen. They were helping to rebuild the lines of communication which were downed by snow and ice, a work belonging to the signal maintainer, and in doing this they were signal maintainer helpers and entitled to the higher rate of pay under said Rule 19. The arguments here made by the Carrier were all answered by Referee Spencer in Award 674, and followed in Award 675, both of which are directly in point and are here controlling.

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 the Carrier violated the Agreement when it failed to pay the employees here involved at signal maintainer helper's rate.

AWARD

The claims will be allowed and the Carrier directed to pay these nine trackmen the difference between the rate of pay for trackmen and that of signal maintainer helpers.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1941.

Dissent to Award Number 1544, Docket Number MW-1532

In the light of the record presented in this case, this Award exhibits arbitrary decision rather than thorough and exhaustive analysis of all elements necessary to sound and conclusive decision, as appears in the following treatment indicated by the Opinion upon which it is based:

The Award waves aside one party's contention that the work done in helping rebuild the signal lines was laboring work not prohibited to Maintenance of Way employees by their Agreement with the arbitrary decree that it was outside the scope thereof. No evidence existed in the record to warrant such decree nor to justify the disregard of the averment that this work had not been and was not prohibited to Maintenance of Way employees.

The Award ignores the record in declaring that in "helping to rebuild the lines of communication * * * they were signal maintainer helpers * * *," for no adequate description either of the work of signal helpers or of the practice on the property which would identify any work as such appeared in the record; neither was there in the record adequate details of the actual work done to permit comparison with any standard for signal helpers' work which any Signalmen's Agreement on this property and any practice under such an Agreement may have set up.

The Award discards without evidentiary basis the Carrier's explanation that on this Railroad it has always been the practice for section laborers to perform laboring work wherever it may be necessary, and declares that "The nine trackmen involved in this claim were called upon and assigned to assist the signal maintainer, etc." That was the claimants' unsupported assertion and it apparently was accepted without inquiry as to facts that might or might not have shown that any work performed evidenced that these claimant employees assumed any of the responsibilities or duties attached to any signalman's position or that in fact any assignment had been made other than that which had always been given to either signal employees or track laborers without violation of the agreements with either of those classes of employees.

In fact, the Award lacks those essential elements of discriminating inquiry and analysis essential to sound decision in harmony with contractual provisions of agreements designed to admit of practical conduct of railroad operations without injury to the rights or the fair compensation of employees according to their respective agreements and without the unnecessary and wasteful injection of technical restrictions upon the rights of various classes of employees that destroy the opportunity for efficient operation.

(S) C. C. Cook
(S) R. H. Allison
(S) A. H. Jones
(S) C. P. Dugan
(S) R. F. Ray