

Award No. 2703
Docket No. MW-2709

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE & HUDSON RAILROAD CORPORATION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Assistant Foreman Almond Spoor and Trackman Mark Killam be allowed the difference in pay between what they did receive at the Assistant Foreman's rate and the Trackman's rate respectively and what they would have received at the Signal Maintainer's rate for work performed as Signal Maintainers sometime between the hours of 8:30 P. M. and 12:00 M., on November 21, 1942.

EMPLOYES' STATEMENT OF FACTS: Sometime after 8:30 P. M., November 21, 1942, Assistant Track Foreman Almond Spoor and Trackman Mark Killam were called upon and instructed to with the use of Signalmen's equipment and tools drill rails and apply bond wires.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: At or about 8:30 P. M., November 21, 1942 the section crew of Section 2-B at Thompson was called to replace a broken rail near Milepost 15 about one-half mile South of Thompson Station. After a new rail had been inserted into the track, Assistant Foreman Almond Spoor and Trackman Mark Killam were called upon and instructed by their foreman to with the use of the Signalmen's equipment, which had been left with the crew by the Signalmen, drill holes into the rail just placed in the track and apply bond wires. In the performance of this service Spoor and Killam performed work that comes within the jurisdiction of the railroad Signalmen. In support of that our statement we quote Rule 1, Section 2, of agreement between the Delaware & Hudson Railroad Corporation and the Brotherhood of Railroad Signalmen of America which reads:

"Signal Department work as referred to in this Schedule will be construed to include all work required for the installation, use, maintenance, repair and renewal of apparatus within the jurisdiction of the Signal Department."

Performing the work that comes under the jurisdiction of and to which the Signalmen would have claim, we maintain that Spoor and Killam should receive the same compensation and pay as that which would have been paid to employes in the Signal Department had they been called to perform this service. In that connection we quote Rule 3, Section 8, of agreement between the Delaware and Hudson Railroad Corporation and the Brotherhood of Railroad Signalmen of America which reads:

"Employes released from duty and notified or called to perform work outside and not continuous with regular working hours, will be

Section Foreman Elgena states that, after the rail was removed from the track, and the new rail installed, and the angle bars installed, and while some of the gang was doing the necessary spiking, he assigned Assistant Foreman Almond Spoor and Trackman Killam to do the necessary bonding, and the elapsed time for each man was about ten minutes.

POSITION OF CARRIER: Assistant Foreman Almond Spoor and Trackman Mark Killam were called under Rule 20 of agreement, covering Maintenance of Way Employes, effective July 1, 1939. Rule 20 reads as follows:

RULE 20

"Employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis, except that employes who have completed their work period, and have been released from duty, required to return for further service within thirty (30) minutes after being released, will be paid as if on continuous duty."

For the 10 minute service performed in bonding rail, Carrier offered the difference between regular rate of employes concerned and signal maintainer's rate under Rule 19 of agreement covering Maintenance of Way Employes, which reads as follows:

RULE 19

"Employes 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."

These employes were working subject to the scope of agreement covering Maintenance of Way employes and Rules 19 and 20 of such agreement cover payment for service performed on call November 21, 1942. There is no basis for claim for a call under agreement covering another class of employes and claim should be denied.

OPINION OF BOARD: On the evening of November 21, 1942, Signal Maintainer Burt was called on account of highway crossing signals at Thompson operating when there were no trains in the circuit. At about 8:00 P. M., Burt discovered a broken rail about one-half mile south of Thompson. The Section Foreman at Thompson was called to change the rail. The Section Foreman called out his forces which included Assistant Foreman Spoor and Trackman Killam. After the rail was replaced, the Foreman directed Spoor and Killam to do the necessary rail bonding, it being work belonging to signalmen. They performed the work requiring 10 minutes time.

The question for decision is whether Spoor and Killam are entitled to the higher rated pay for the 10 minutes worked as provided by Rule 19 of the current agreement between the Carrier and the Maintenance of Way employes or for two hours at overtime rate in accordance with Section 8, Rule 3 of the current Signalmen's Agreement. We think the Maintenance of Way Agreement contemplates work which comes only within that Agreement. Where Maintenance of Way employes are called to perform work under the Signalmen's Agreement, they are entitled to the pay therein provided. The position of the Organization is correct.

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 as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1944.