

Award Number 3117
Docket Number MW-3133

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT of CLAIM: Claim of the System Committee of the Brotherhood that Section Laborers J. Lovell, N. J. Cox and M. E. Robbins, Beardstown, Illinois, shall be paid the difference between what they received at section laborers' rate of pay and that which they should have received at signal maintainer helpers' rate of pay for ten hours and fifteen minutes on August 5, 1944, on which day they were instructed and assigned to assist signal maintainers.

EMPLOYES' STATEMENT OF FACTS: On August 5, 1944 section laborers J. Lovell, N. J. Cox and M. E. Robbins, at Beardstown, Beardstown Division, were instructed and assigned to assist signal maintainer Hart and assistant signal maintainer Lamb in connection with work involving changing spindles on certain switches in interlocked territory, Beardstown Yard. While thus assisting the signal maintainers in connection with this work the claimants performed the work of signal maintainer helpers.

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

POSITION OF EMPLOYES: As stated in Employees' Statement of Facts, on August 5, 1944 the claimants, section laborers J. Lovell, N. J. Cox, and M. E. Robbins, were instructed and assigned to assist signal maintainer Hart and assistant signal maintainer Lamb in the performance of work involving changing spindles etc. on certain switches in interlocked territory in the Beardstown Yard. The work involved was a class of service coming within the jurisdiction of signal maintainers, requiring the assignment of signal maintainers. The claimants, the 3 sectionmen, were as stated assigned to assist the two signal maintainers in the performance of the work involved. Thus the 3 claimants performed the work of signal maintainer helpers, for which service they were paid at section laborers' rate of pay. It is the position of the employees that inasmuch as the claimants performed a class of service applicable to signal maintainer helpers they are entitled to payment at the rate of pay applicable to signal maintainer helpers or 79c per hour. Schedule Rule 56 supports that our position. It reads:

"An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position."

It is obvious, under the circumstances, that there could be no provision made in schedule agreement covering rules and working conditions of Signal Department employes for compensation to Maintenance of Way Department employes engaged in work, a right to exclusive performance of which is, as an elemental principle of law, in the Signal Department employes. It may be said in passing that Signal Department employes are expressly excluded from application of rules of Maintenance of Way Agreement, as will be observed by reference to Article 1 of Agreement, to wit:

"These rules govern the hours of service and working conditions of all employes in the Maintenance of Way and Structures Department, including roadway machine, water service, and welding employes, not including supervisory forces above the rank of foremen, and not including signal, telegraph and telephone maintenance departments, and clerks." (Emphasis supplied).

Since it is a general rule that agreement is necessary to every true contract and a contract can neither impose liabilities nor confer rights on a person who is not a party to it, this claim fails entirely of its purpose because of the total lack of contractual substance.

OPINION OF BOARD: This claim is based upon a violation of Rule 56, the pertinent part of which reads:

"An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day * * *."

Carrier concedes that the section laborers performed the following work on each of the two spring switch stands at Beardstown on August 5, 1944:

Removed the screw spikes that fastened the switch stand to the ties;
Turned the switch stand on its side, removed the old one-piece spindle and installed the improved two-piece spindle therein;

Restored the switch stand to proper position on the ties and refastened it with screw spikes.

In a letter to Local Chairman Williams under date of February 27, 1945, Signal Maintainer Hart described the work of Claimants as follows:

"The section laborers Lovell, Cox, and Robbins of Section 10, Beardstown, Illinois assisted me on August 5, 1944 in repairing two spring switches in Beardstown, Illinois, one located at North end of Beardstown load yard and one at end of double track at 2nd Street, Beardstown.

"The work consisted of disconnecting the switch stands from the switches, taking the stands loose from the ties, turning the stands down, taking the throw rods out and putting in new rods, reassembling the stands, putting stands back on ties, fitting and adjusting the switches to the proper throw. (Emphasis supplied).

In support of its position Carrier cites Operating Rule 155 which provides among other things:

"In connection with interlocking and block signaling, Foremen will be held responsible for the care and maintenance of * * * switches * * * and shall cooperate with signal repairmen in making necessary repairs."

Were these section men under their Foremen, merely cooperating with signal repairmen in making necessary repairs as contemplated by that operating rule? We think not. It is to be noted that the Foreman was not present on this job. To the contrary it is not denied that Claimants were assigned by the Track Supervisor and by their Foreman to assist the Signal Maintainers in the performance of the work.

There was no one present on the job to supervise the work except the signal maintainers and it seems clear that the section men could not have performed this type of work without supervision. True, the section men are required to perform some work in connection with the care and maintenance of switches. But Signal Maintainer Hart states that these men in addition to performing the work of disconnecting the stands and refitting them into place again, also assisted in taking the throw rods out and putting in new rods and fitting and adjusting the switches to the proper throw. It seems to us that this latter work, having to do with the proper adjustment of the mechanism of this switching device is signalmen's work.

This conclusion is fortified by the instructions issued from the Office of Signal Engineer wherein it is stated that one of the responsibilities of a signal maintainer in connection with spring switch maintenance is the "adjustment of mechanism." The statement of Signal Maintainer Hart indicates that these men assisted in adjusting the mechanism of the spring switches. The fact that these men worked 10 hours and 15 minutes on the two switches indicates that considerable time was consumed in the matter of the installation and adjustment of the spindles.

Claimants are therefore entitled to the higher rated pay of signal maintainers helpers. See Awards 2703, 2169, 2094.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 1st day of February, 1946.