

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That bridge and building employes, while assigned and employed in connection with construction of signal bridges, Rock Island Division, during the period from December 16, 1942 to December 14, 1943, are entitled to adjustment in pay as follows:

B&B Foreman N. B. Sears shall be paid the difference between what he received at bridge and building foreman's rate of pay and that which he should have received at the rate of pay applicable to signal department foremen; B&B Mechanics C. I. Patnoe, L. B. Lampher, N. J. Klapper, E. J. Wolfe, C. H. Belt, and V. A. Cook shall be paid the difference between that which they received as bridge and building mechanics and that which they should have received at rate applicable to signal men; B&B Helpers C. H. Bornsheuer, W. A. Shofner, O. W. Umlandt, and S. Barracani shall be paid the difference between what they received as bridge and building helpers and that which they should have received at the rate applicable to signal helpers:

(2) That B&B employes while assigned and employed in connection with construction of signal bridges, Chicago Division, during the period from April 15 to July 15, 1942, inclusive, are entitled to adjustment in pay as follows:

B&B Foreman William Gordon shall be paid the difference between what he received at bridge and building foreman's rate of pay and that which he should have received at the rate of pay applicable to signal department foremen; B&B Mechanics John Atzinger, Charles Davis, Garrett DeYoung, Erwin Warning, and A. Pasquale shall be paid the difference between what they received as bridge and building mechanics and that which they should have received at the rate of pay applicable to signal men; and that B&B Helper R. Danielson shall be paid the difference between what he received as bridge and building helper and that which he should have received at the rate applicable to signal helpers.

FOR THE EMPLOYEES:

/s/ W. C. Elms
General Chairman
/s/ John A. Work
Vice President

FOR THE CARRIER:

/s/ G. E. Mallery
Manager of Personnel
/s/ C. R. Swenson
Signal Engineer

APPROVED:

/s/ W. H. Hillis
Operating Officer"

This agreement clearly designated the work as signalmen's work and clearly brought into operation as of April 27, 1945, the exception in Rule 1 of the Maintenance of Way Agreement reading as follows:

"... except signals, telegraph and telephone lines."

Under the circumstances we submit the employees' claim should be denied.

OPINION OF BOARD: The employees here were engaged in building concrete foundations and erecting signal bridges and supports on one job from April 15 to July 15, 1942, and on another from December 16, 1942 to December 14, 1943.

The Maintenance of Way employees contend that the work they were doing was properly under the Agreement of the Carrier with the Brotherhood of Railroad Signalmen of America. They claim pay under the Composite Service Rule which, so far as material here, is:

"An employee working on more than one class of work on any day, where there is a difference in the rate of pay, will, if employed more than one-half day on the higher class of work, be paid the higher rate."

It appears that both the Maintenance of Way Organization and the Signalmen's Organization are now in agreement that this work is covered by the Signalmen's Agreement. The Carrier contends that in accord with past practice on the property it had this work done by bridge and building men under the Maintenance of Way Agreement. The employees submit, however, that signalmen did this class of work at Sherwood to Pollo, Missouri, in 1939 and 1940 and at Mokena, Illinois in 1931 and 1932.

In any event the Brotherhood of Railroad Signalmen on March 26, 1942 claimed this work and protested its being done by other than Signal Department employees. Nevertheless the Carrier had the work done by Maintenance of Way men. The result was a claim by the Maintenance of Way men doing the work for the higher rate of pay under the Signalmen's Agreement and a claim by the Signalmen. The Carrier resolved the claims of the Signalmen by the agreement of April 27, 1945, wherein the claims of the Signalmen were settled by designating the work as Signalmen's work. The Carrier on the property denied the claims of the Maintenance of Way men on the ground that they were properly assigned to this work under Rule 1 of the Maintenance of Way Agreement of May 1, 1938. It then took the position that it was not Signalmen's work. It now takes the position that there was a conflict between the two agreements which was resolved by the agreement of April 27, 1945 and until that time "claims made under either contract are not valid". This is an apparent contention that the work was not under either contract. This analysis of their position is sustained in the conclusion of their statement dated January 3, 1946 wherein the Carrier states that the agreement of April 27, 1945 "clearly designated the work as signalmens work and clearly brought into operation as of April 27, 1945 the exception in Rule 1 of the Maintenance of Way Agreement reading as follows: "except signals, telegraph and telephone lines". In short the Carrier's concluding position is that the agreement of April 27, 1945 did not put this work under the Signalmen's Agreement as of that date, but that that agreement "clearly" recognized that the work was Signalmen's work.

Of course if this work was under the Maintenance of Way Agreement the agreement with the Signalmen could not take it out from under the Maintenance of Way Agreement. If it was there when this work was performed it is there now and the agreement of April 27, 1945 does not change that fact. It may or may not be that the Maintenance of Way Organization would be estopped from now claiming the work, because of their position here—but estoppel does not operate to change the contract—it only operates to prevent its enforcement. If it is not Maintenance of Way work now it was not Maintenance of Way work when performed.

The Carrier argues that because of the dilemma in which it now finds itself it should be excused from paying these claims. These claims begin with work performed on April 15, 1942 and subsequent thereto. It is not disputed that on March 26, 1942, before any work had been done the Signalmen formally claimed this work and protested having the work done by anyone else. The Carrier was there put on notice of the controversy, nevertheless it proceeded to have the work done by Maintenance of Way men. After the first project, in point of time, was completed the Maintenance of Way men initiated the claim now here for work on the first project. Nevertheless the Carrier proceeded to have Maintenance of Way men perform the work on the second project. It was clearly again put on notice. It knowingly proceeded to have the work done by Maintenance of Way men. It should pay therefore at the higher rate provided by Rule 37. We said in Award 2703:

“Where Maintenance of Way employes are called to perform work under the Signalmen’s Agreement, they are entitled to the pay therein provided.”

We see no merit in the Carrier’s contention that the Claimants are not entitled to the rate of pay claimed because they had not qualified by experience as Signalmen in the various ratings. The Carrier recognized their qualifications when it had them do the work.

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 for the reasons stated in the Opinion the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1946.