

Award No. 3638
Docket No. MW-3642

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Grady Lewis, 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 that Section Men Richard Benningfield and Ben James, Tiskilwa, Rock Island Division, who were assigned to assist telegraph linemen during the month of March 1945, as follows: March 6, 4 hours; March 7, 8 and 9, 8 hours each day; March 10, 4 hours; and March 13, 8 hours; a total of 40 hours, shall each be paid the difference between what they received at section men's rate of pay, 60 cents per hour, and that which they should have received at linemen helper's rate of pay, 79 cents per hour, for the 40 hours that they were assigned to assist telegraph linemen.

EMPLOYEES' STATEMENT OF FACTS: On the following dates during the month of March, 1945, Section Men Richard Benningfield and Ben James, Tiskilwa, Rock Island Division, were assigned by the Carrier to work under the direction of a lineman in cutting down trees which were creating a hazard to the Carrier's telegraph lines:

March 6—4 hours
March 7—8 hours
March 9—8 hours
March 9—9 hours
March 10—4 hours
March 13—8 hours

Agreement effective May 1, 1938, between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 37 of the agreement in effect between the Carrier and the Brotherhood reads as follows:

"RULE 37. COMPOSITE SERVICE. An employe 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.

"When properly assigned by their superior to a lower rated position, temporarily, their rate of pay will not be reduced.

"Nothing in this will permit the regular assignment of employes to higher rated work for a half day or less to avoid payment of the higher rate."

Inasmuch as there was no violation of the controlling agreement for the above reasons we respectfully petition your Board to deny the claim of the employees.

OPINION OF BOARD: The claim is based upon the fact of using section men in the work of cutting down some 200 trees along and adjacent to the right-of-way of Carrier while assisting and under the general supervision of a telegraph lineman.

Claimants rely upon Rule 37, the composite service rule, of the agreement. Such rule provides:

"RULE 37. COMPOSITE SERVICE. An employe 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.

When properly assigned by their superior to a lower rated position, temporarily, their rate of pay will not be reduced.

Nothing in this will permit the regular assignment of employes to higher rated work for a half day or less to avoid payment of the higher rate."

The cutting of trees and the cutting and trimming of underbrush is not the exclusive work of any class or craft of workmen. The method of determining to which class such work belongs is by an examination of the reason for the performance of the work. Here the work was performed at the behest of, under the direction of, and for the benefit of the telegraph department. Such being the case, the work is that of lineman helpers and should be compensated for at the rate of pay of lineman helpers under the composite rule.

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 agreement has been violated.

AWARD

Claim sustained for each date mentioned in the claim except for March 6 and March 10.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.