

Award No. 5161

Docket No. MW-5018

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

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

- (1) That the digging of trenches and holes in connection with the re-location of Signal facilities is work covered by the Signalmen's agreement;
- (2) That Trackmen engaged in performing the type of work referred to in section (1) of this claim be paid the difference between what they did receive at the Trackman's rate and what they should have received at the Signal Helper's rate for all work of this nature performed subsequent to March 5, 1948.

EMPLOYES' STATEMENT OF FACTS: On or about March 5, 1948, Track Foreman Michael Rusnock and his crew were required to dig holes and trenches for the Signal Department. These holes and trenches were dug for the purpose of re-locating dwarf signals and other signal apparatus.

Subsequent to March 5, 1948, various section crews have been required by the Carrier to assist the Signal Department by digging holes and trenches for the purpose of re-locating signal apparatus and appliances. The Signal Department Helpers' rate of pay is greater than the rate of pay which was paid to the trackmen who performed this work. All of the trackmen engaged in this work were paid the regular trackmen's rate of pay.

The agreement in effect between the two parties to this dispute, dated July 14, 1941, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: We are quoting below a letter addressed to Chief Engineer G. A. Phillips by Mr. R. A. Flanagan, General Chairman of the Brotherhood, dated June 28, 1948. We are also quoting below Chief Engineer Phillips' reply to General Chairman Flanagan which is dated July 19, 1948.

OPINION OF BOARD: On March 5, 1948, Track Foreman Rusnock and his section crew were required to dig holes and trenches in connection with the relocating of dwarf signals and other signal apparatus. The Organization contends that this is signal helper's work and not that of a trackman.

The work in question is signal helper's work. Whether the work was that of a trackman or a signal helper is dependent upon the purpose to be accomplished by it. The purpose here was to relocate dwarf signals and other signal apparatus. The work was therefore within the Signalmen's Agreement. Awards 3638, 4077, 4487, 4528, 4609, 4757.

Claimants are entitled to be paid the signal helper's rate under the composite service rule if such rate be higher than the rate of their assigned positions.

Carrier insists that the claim is too indefinite to sustain an affirmative award. We think the claim is valid as to Foreman Rusnock and the members of his section crew as to March 5, 1948, and subsequent dates. As to all others, the claim is too general.

Carrier contends that this work has been performed by section crews for a great many years. Acquiescence in the violation does not prohibit the enforcement of the Agreement. It merely results in a waiver of a claim to reparations during the period of the acquiescence of the employees in the violation.

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 was violated.

AWARD

Claim (1) sustained. Claim (2) sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.