

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DES MOINES AND CENTRAL IOWA RAILWAY COMPANY

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

- (1) That the Carrier violated the effective agreement when it failed to properly compensate Maintenance of Way Track Department employees assigned to the crews of Foreman Edison Steffens and Foreman Edward Steffens at the Line Groundman's rate of pay for service performed during the period November 17, 1949 to January 1, 1950;
- (2) That the employees in the above referred to crews, be paid the difference between what they received at their regular rate of pay, and what they should have received at the Line Groundman's rate of pay during the period of time they were performing Line Groundman's work.

EMPLOYES' STATEMENT OF FACTS: On November 17, 1949, Edison Steffens, Section Foreman, was instructed by the General Foreman, C. A. Monroe, to assist the Line Foreman in cutting down poles, stripping equipment from poles, cutting wire, and loading the salvaged and scrapped material in cars. Foreman Steffens and his crew of three laborers worked at this assignment a total of 40 days, during the period November 17, 1949 to January 1, 1950.

On December 13, 1949, Foreman Edward Steffens was instructed by the General Foreman to assist the Line Foreman in the same type of work. Foreman Edward Steffens employs three men in his crew. They were engaged in assisting the Line Foreman for a total of sixteen (16) days.

The rate of pay for section laborers is 95¢ per hour. The rate of pay for line groundmen is \$1.22 per hour.

Claim was filed in behalf of the section laborers; claim requesting that the track laborers be paid at the line groundman's rate of pay for the time consumed in assisting the Line Foreman.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated September 1, 1941, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

energized overhead facilities. The Carrier, thereupon, elected to utilize the line crew, during such times as they could be spared from the continued maintenance of the energized portion of the overhead system, to salvage the overhead transmission and trolley system and copper wires on that part of the railroad no longer using electric locomotives. Rather than reduce the section forces, which is normal at that time of year, the Carrier assigned the gangs of Foreman Edison Steffens and Edward Steffens to the picking up of felled trolley and transmission poles and miscellaneous materials from the salvage operation along the right-of-way. The trolley and transmission poles being salvaged and converted into posts for the maintenance of right-of-way fences.

POSITION OF CARRIER: Rule 24 of the current agreement with the Brotherhood of Maintenance of Way Employees reads as follows:

"Rule 24 (a) An employe working on more than one class of work (4) hours or more on any day will be allowed the higher rate of pay for the entire day.

(b) When temporarily assigned by the proper officer to a lower rated position his rate of pay will not be reduced."

This is the only rule in the current agreement that makes any reference to class of work within the track labor group of employes.

The work being performed by both the line crew and the section crew was strictly a salvage scrap operation and one of policing the right-of-way. There is no specific classification for this type of work under the agreements in effect between the Carrier and the linemen or the Brotherhood of Maintenance of Way Employees. Both the transmission system and trolley system were dead and could be dismantled and removed by any class of unskilled labor. The pole line was first sawed down with a power saw. Following the dropping of the poles to the ground all appurtenances, including copper conductors, were picked up and salvaged as scrap. No attempt was made to recover any of the material in a reuseable condition.

The line crew was discontinued after January 1, 1950 account of the completion of the dieselization program. As a consequence, we also discontinued the salvage work and later in the spring let out, under contract, the remaining salvage work to be performed. The Carrier, under its then current agreement with the line crew, paid regular rates of pay to both its linemen and groundmen, since by instruction, the Carrier had assigned these men to a lower class of work.

It is requested that the claim be denied.

OPINION OF BOARD: This claim involves the question whether certain work performed by Maintenance of Way employes was their own work or linemen's work under a composite service rule. The claim is for the difference between 95¢ per hour, the rate of pay of section laborers, and \$1.22 per hour, the rate of pay of line groundmen.

In 1949 the Carrier converted its operation from electric to diesel electric motive power. As a consequence in November, the entire transmission and trolley system for a distance of 17 miles was removed from service and de-energized. Thereupon the Carrier started dismantling the trolley and transmission systems, so de-energized, and salvaging the material. Prior to the change to diesel electric operation, the Carrier maintained a line crew to perform work in the erection, construction and maintenance of all overhead and underground feeder and power wires and lines.

With only 1/3 of the electric operation remaining, the Carrier assigned the line crew to the work of dismantling and salvaging and also assigned two section crews to assist. Two Section Foremen also assisted but the claim is confined to their crews. The assignment was made by written instructions

which are set forth in the Employees submission. Generally speaking, the work consisted of felling poles; dismantling on the ground; cutting, sorting and rolling wire; salvaging poles, sleeves, ears and high line insulators; loading into box cars and unloading at the freight house.

The assignment made no segregation of the work as between the section forces and the line forces with the minor exception of the unloading of the copper at the freight house which was to be performed by the section forces alone. Otherwise all of the items of work were assigned to be performed by both forces.

The essential question is whether it was proper to assign the section crews to assist at their own rates of pay. It is the Carrier's thought that the work was "strictly a salvage scrap operation"; that since the trolley and transmission systems were dead, the work could properly be performed by any class of unskilled labor; and that the operation was simply one of policing the right-of-way.

The assignment, however, was not simply a policing operation. The section forces were not assigned merely to clean up after the linemen as in Award 4872, but rather to assist the line force generally in the entire dismantling and salvage operation.

It may be that the assistance actually rendered was confined to common work which could properly have been performed by any class of unskilled labor. But we cannot subdivide the nature of the assistance rendered here, when the Carrier did not choose to do so in making the assignment.

It follows that the section forces were entitled to the groundmen's rate of pay. (Awards 4795 and 5208.)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of April, 1951.