

Award No. 11663

Docket No. SG-11236

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement, especially Rule 1, when it assigned a Signalman on the Megger Crew to perform the duties of an Inspector.

(b) The Carrier compensate Signalman C. E. Buck the difference between the Inspector's rate of pay and the Signalman's rate of pay, beginning January 1, 1958, and continue to do so until such time as this claim is settled.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. E. Buck was assigned to the position of Signalman — Megger Crew on Bulletin No. SD-862 of May 7, 1957. The regular duties of this position are the inspection and adjustment of signal appliances and apparatus. Inasmuch as Rule 1 of the Signalmen's Agreement covers this type of work and Mr. Buck is classified and paid as a Signalman, Mr. R. P. Hodsdon, General Chairman, presented the following claim to Mr. B. F. McGowan, Superintendent of Signals, on January 17, 1958:

"I have been directed by Local No. 6 to present this claim in behalf of Mr. C. E. Buck for the difference between Signal Inspector's Rate of pay and Signalmen's Rate of pay retroactive to January 1st, 1958 for the continual violation of using a Signalman to perform the Inspectors duties of conducting Insulation resistance Tests.

The principal duties of the Megger Crew is to inspect and test the insulation of all cables and wires (excluding track wires) and to inspect and test the grounds.

To allow a signalman to conduct these inspections and tests is a violation of Rule No. 1 of the Agreement, also refer to **SIGNAL DEPARTMENT MAINTENANCE AND OPERATION INSTRUCTIONS**, book S. D. I. No. 153 which states that 'Insulation resistance tests shall be conducted by the Signal Supervisor or Signal Inspector.'

might as reasonably argue that the lowest clerk is entitled to the president's salary because the president's duties include clerical work.

In the first place the principal duty of the meggering crew is testing—not inspection. Periodic tests are required by law and this crew is assigned to conduct these tests according to a schedule prescribed by law. Secondly, at no time has the Brotherhood defined the "inspection" work they claim entitles the claimant to Inspector's pay. At no time have they contended that Signalsman Buck adjusts signal appliances or apparatus or is even qualified or capable of performing the duties customarily assigned to Signal Inspectors. They simply take the position that some sort of inspection is somehow involved in the conducting of meggering tests and therefore claimant Buck is entitled to Signal Inspector's pay.

Whatever "inspecting" the meggering crew performs is in no way comparable to the inspection work of Signal Inspectors. "Inspection" of the nature involved in meggering is no more than the "inspection" performed by all employees looking over their job and the tools and materials with which they work. Signal Inspectors, on the other hand, inspect and test signals, interlocking plants, car retarders, highway crossing protection devices and other appurtenances, centralized traffic control systems, etc., to determine whether or not these facilities are being properly installed, maintained and repaired by signalmen.

The fact that a Signalsman had been assigned full-time meggering duties for almost five years without protest from the Brotherhood is indicative of the propriety of such assignment.

In summary, meggering is not the exclusive work of either Signalmen or Signal Inspectors; testing of wires, cables and grounds is not synonymous with inspection of signal appliances or apparatus necessary to the proper installation, maintenance and repair of the signal system; the Brotherhood's acceptance for five years of the assignment now complained of bears witness to the propriety of Carrier's action.

This claim is not supported by either schedule rule or practice and Carrier respectfully prays that it be denied accordingly.

All data in support of Carrier's position in connection with this claim has been presented to the duly authorized representative of the employees.

OPINION OF BOARD: Claimant is a member of a two man crew, the principal duty of which is to megger wires and cables. Historically, prior to 1939, insulation resistant tests (meggering) were conducted by the Signal Supervisor or Signal Inspector. Thereafter meggering duties were performed by Signalmen and Inspectors incidental to their other work. With the need for standardization procedures for all systems, the Interstate Commerce Commission outlined rules, standards, and instructions governing railroads having signal systems. In later years, at least five years before this submission, Carrier established a two man crew to perform meggering. This crew was paid Signalsman's rates.

Claimant maintains that in his performance of meggering, as his principal duty, he is doing work of an Inspector's classification and is entitled to the application of Inspector's rate of pay. He supports this contention with the statement that Carrier recognizes the supervisory nature of meggering in one of its directives.

Carrier, on the other hand, interprets meggering as a routine and incidental function which arises in the course of maintenance, construction, or repair work and which can be performed by both Inspectors and Signalmen. Moreover, Carrier points out that the practice of a two man meggering crew receiving Signalman's rate of pay has been exercised on the property for at least five years without the Brotherhood filing a formal protest.

We concur with both parties that meggering can be conducted by Inspectors and Signalmen. We observe that the Agreement of the parties and the Interstate Commerce Commission regulations do not set forth a classification for meggering, nor do they designate this work as supervisory in nature. We also observe that in practice Signalmen and Inspectors, without objection, perform meggering. The performance of meggering as a full-time duty does not change a Signalman's status to that of Inspector. We cannot accept the premise that if meggering is performed by the Inspector, the Signalman cannot perform these duties on a full-time basis without receiving Inspector's rate of pay.

Where it is apparent that the Agreement of the parties is not definitive, a practice which was apparently acceptable for an extensive period of time cannot be ignored. We are of the opinion that the interpretation of meggering solely as a Supervisory or Inspector's classification cannot be read into the Agreement of the parties, nor can it be established from current practices. We, therefore, hold that the Carrier has not violated the Agreement of the parties.

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

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1963.