



Award No. 4742

Docket No. 4600

2-SP(PL)-CM-'65

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**The Second Division consisted of the regular members and in
addition Referee Howard A. Johnson when award was rendered.**

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. This grievance involves the operation of an electrically controlled blue light and sound system at the West Oakland Passenger Yard, Oakland, California, which is not affording the employees working in this locality the proper protection as provided under the Current Controlling Agreement, Rule 49 (e) and (f).

2. That accordingly the carrier be ordered to place in effect such provisions that will comply with the terms of Rule 49, identified as "Protection of Employees."

EMPLOYEES STATEMENT OF FACTS:

During the early part of 1962 the carrier commenced the installation of an electrically controlled system which would replace the old system of the employee placing and removing blue flags and lights to equipment being worked.

March 26, 1962, the carmen's committee was called into conference with the master mechanic and were advised of the installation and the conditions under which the system would work.

April 16, 1962, Mr. William Autry, the local chairman, took formal steps to protest this new system, advising of its inadequacy as was outlined to him in the conference held March 26, 1962. The carrier disregarded the protest made by the local chairman and so file was forwarded to my office, at which time I called this inadequacy to the attention of Mr. W. O. Brown, superintendent mechanical department and later to Mr. N. A. Nugent, superintendent of safety, which protests were also of no avail. The carrier continued this installation and October 24, 1962, placed same into operation.

The carrier issued instructions which were placed on bulletin boards dated October 24, 1962, as to instructions to be followed in placing this new facility into operation.

The blue flag referred to in Rule 49(f), supra, is the blue sign described in transportation department Rule 26, quoted supra. The latter rule provides that a blue sign must be displayed at each end of track (other than repair tracks) or equipment to which coupling can be made or a standee on the track or between rails of the tracks regularly assigned for repairing of cars. Since the blue sign described in paragraph No. 5 of carrier's statement of facts is undistinguishable from the blue sign described in the first paragraph under transportation department Rule 26, aforesaid blue sign is not in violation of Rule 49(f) of the current agreement or transportation department Rule 26.

With respect to the petitioner's contention that the blue flag should not be permanently mounted on light standards, attention is directed to the fact that Rule 49(f), supra, is silent as to the manner in which the blue flags or blue signs shall be displayed. Therefore, since the blue sign is not removed but is continually displayed on the tracks here involved, Rule 49(f) is not being violated nor can it possibly be violated under such circumstances. Attention is further directed to the fact that the petitioner is not objecting to the light standards nor the blue light displayed therefrom. The aforesaid light standards are the signal lights described in carrier's statement of facts.

That carmen be allowed to place their blue flag when commencing work and removing same when work is completed or when necessary for switching to be performed:

As set forth in carrier's statement of facts, carmen have not been required to place blue flags on coach yard tracks when blue flag protection is required nor remove said blue flags when that protection is no longer required. However, proper protection has been performed by blue flagmen (carmen helpers) prior to October 24, 1962, as described hereinabove and also blue flagmen subsequent thereto by operating electrically controlled blue flag system, as well as manually when blue flag protection is required beyond limits of that system.

The employees' representatives objected to the reference to an amber light in paragraphs Nos. 1 and 3 of special notice dated October 24, 1962; therefore, as a matter of cooperation carrier reissued its special notice under date of October 26, 1962 and did not refer to amber light therein as requested by the organizations. Aforementioned special notice to employees was otherwise acceptable to the representatives of the employees of the several crafts working at the coach yard, which fact is not disputed in this case.

Carrier has clearly demonstrated hereinabove that under all of the circumstances involved in this case petitioner's unsupported contention that the operation of the electrically controlled blue flag system is not affording the employees working at the coach yard the proper protection as required under the provisions of Rule 49(e) and (f) of the current agreement, is entirely without merit.

C O N C L U S I O N :

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Carrier has devised an electrically controlled system to handle blue flag protection. Except for an objection to the visibility of the new overhead blue lights, which was corrected, the General Chairman agreed that the new system was satisfactory with the following exceptions:

"That the tags on the toggle switches be handled by the workmen rather than the foreman and that the permanent blue flag now placed on light standards be abolished and that carmen be allowed to place their blue flag when commencing work and removing same when work is completed or when necessary for switching to be performed."

Management at first indicated its assent to the workmen's handling of their tags, but later overruled both objections and put the new system in effect as planned.

It is of course within the Carrier's province to conduct its business at its own discretion except as limited by statute or by agreement. However, this matter, concerning employees' safety, is treated in Rule 49 of the Agreement as follows:

"(e) Employes required to work under cars or locomotives, will protect themselves with proper signals.***"

"(f) Trains or cars while being inspected or worked on by train yard employes, will be protected by blue flag by day and blue light by night, which will not be removed, except by the workmen placing same. (See Transportation Department Rule 26)."

Obviously the Carrier cannot unilaterally abolish or alter the contractual provisions of the agreement. There is some dispute as to the meaning of these provisions that the employes "will protect themselves with proper signals" and that the blue flag or blue light will not be removed, except by the workmen placing same." The Carrier correctly states that these provisions are not clear unless considered in the light of its Transportation Department Rule 26, which outlines the established procedure, and to which special reference is made in Rule 49(f) of the Agreement. It provides in part as follows:

"When employes are working upon, in, under or between an engine or units, train, car or cars for inspection, repair or servicing of any of them a blue sign reading 'Men at Work' (white lettering on blue background) must be displayed at each end of track or equipment to which coupling can be made. If engine is attached to train, car or cars, blue sign on engine end must be displayed on engineer's side of cab. On tracks regularly as-

signed for repairing of cars a blue sign must be displayed on a standee on the track or between rails of the track and switches leading thereto must be locked with a special lock.

"At night a blue light must be attached to each blue sign prescribed herein.

"When more than one class of employe is engaged in the work, a disk with the name of each employe or each class must be attached to the blue sign. A disk may be removed only by the employe attaching it or by an authorized employe. Signs or lights must not be removed by any person other than the employe who placed it, or by an authorized employe, and not until all disks, if any applied, have been removed.

"An engine, train, car or cars protected by a blue sign must not be moved nor coupled to, or other equipment placed so as to obstruct the view of the signs or lights."

As noted above, the Organization's objections to the new system are limited to the permanent attachment of the blue flags (signs) on light standards, and to the handling of the employes' tags (disks) by foremen rather than by employes. The objections are understandable; for the agreement provides that the employes "will protect themselves with proper signals," which are blue flag by day and blue light by night, and "which will not be removed, except by the workmen placing same," indicating that the signals will show only when needed for warning purposes, and will be handled by the men for their own protection. Since those provisions are contractual they can be changed only by negotiation, and Claim 1 must be sustained. Claim 2, that the Carrier be ordered to take certain action, is not within this Board's power, since it lacks such authority; but the Carrier should comply with Rule 49 to the extent not waived by the Organization, until and unless that rule is modified or revoked.

A W A R D

Claim 1 sustained.

Claim 2 disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.

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