

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

ATCHISON, TOPEKA & SANTA FE RAILWAY

STATEMENT OF CLAIM: "(a) Claim for compensation at the overtime rate for Signal Maintainer S. P. Creason for the overtime hours worked on the following dates and subsequent thereto, by Section Foremen, while protecting the interlocking plant at Emporia Junction as the result of storms: December 22, 25, 26, 31, 1939; January 5, 6, 7, 13, 14, 15, 17, 18, 19, and February 2, 1940.

"(b) Claim for compensation at the overtime rate for Signal Maintainer Homer Green for the overtime hours worked on the following dates and subsequent thereto, by Section Foremen, while protecting the interlocking plant at Merrick as the result of storms: December 22, 26, 1939; January 1, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 29, and February 3, 1940."

EMPLOYEES' STATEMENT OF FACTS: "The current agreement between the Atchison, Topeka and Santa Fe Railway Company and the Brotherhood of Railroad Signalmen of America, effective June 1, 1939, governing the hours of service, rates of pay and working conditions of signal department employees provides among other things that the maintenance and repair of interlocking plants are duties coming within the purview of said agreement and shall be performed by employees classified in said agreement.

"Along with other duties, Mr. S. P. Creason and Mr. Homer Green are assigned to duties of maintaining the interlocking plants located at Emporia Junction and Merrick respectively.

"On December 22, 1939 and on subsequent dates, when the weather conditions necessitated the assignment of employees at either of these interlocking plants outside of the regular assigned working hours of the signal maintainer in order to keep the switches and other apparatus free from snow and ice so that they would be in proper working order, section foremen were given these assignments. During the regular assigned working period of the maintainers (Messrs. Creason and Green) they were required to remain at the interlocking plants to perform such duties."

POSITION OF EMPLOYEES: "It is the position of the Brotherhood that the carrier erred in assigning the section foreman to the duties of keeping the switches and other signal apparatus at the interlocking plants at Emporia Junction and Merrick free from snow and ice in the absence of the signal maintainer regularly assigned to the territory in which said interlocking plants are located.

"The Brotherhood holds that in committing this error, the Management violated the provisions of the current agreement effective June 1, 1939. The

is cited, or practice in the absence of rule. Where the matter is appealed, as here, then this Carrier has been compelled to raise the issue of jurisdiction, as will be seen from the record of the Board in Awards Nos. 643 and 906; and it raises that issue now and requests the National Railroad Adjustment Board, Third Division, to formally notify The Association of Maintenance of Way and Miscellaneous Employees—The A. T. & S. F. Ry. System, Lock Box 254, Topeka, Kansas, of the pendency of this claim and of the right of that Organization to intervene, and further requests that the National Railroad Adjustment Board, Third Division, allow The Association of Maintenance of Way and Miscellaneous Employees—The A. T. & S. F. Ry. System ample time for such purpose to the end that the respective rights of all interested parties may be determined.

"In summary, we submit:

- "(1) The work at issue is not signal maintainer's work;
- "(2) It is not promised nor conveyed to the signal maintainers or other signal department employees by any contract;
- "(3) The work at issue is as it always has been fundamentally that of section forces and conveyed to them by contract;
- "(4) The Board has no jurisdiction to render an award against the Carrier because
 - (a) such an award would be creation, not application, of contractual obligation;
 - (b) the Organization representing the section forces and the employees in such forces are not parties to this proceeding.

"The Carrier has not been served with a copy of the Employees' submission, other than its 'Statement of Claim,' consequently, it is not informed with respect to the alleged facts, contentions and allegations which the Employees' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and allegations heretofore presented to the Carrier by the Employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions, and allegations made by the Employees in their ex parte submission, or to any other submission, which the Employees may make to your Honorable Board in this case."

OPINION OF BOARD: The Employees concede that it is proper for track forces to sweep snow from switches at interlocking plants, and it is clear that this has always been the practice. The Employees claim, however, that whenever track forces are used for this purpose and Signalmen are not on duty at a given interlocking plant they should be called to supervise the work. The claim is based on the fact that Signalmen are subject to call and that Signalmen are held responsible for maintaining interlocking plants. This responsibility is derived (a) from the Scope Rule and (b) from the Carrier's Operating Rules.

As to (a), the Scope Rule merely states that employees who maintain interlocking plants are covered by the agreement. It does not expressly define their responsibilities or specify under what circumstances the Management should call them for overtime duty in connection with maintaining plants.

As to (b), Carrier's Rule 268 provides that Signalmen are responsible for "the proper maintenance" of the apparatus assigned to their care, but obviously this does not create any contractual obligation on the part of the Carrier to call Signalmen during snowstorms. Carrier's Rule 158 places the obligation on Section Foremen during snowstorms to keep the switches, etc.

at interlocking plants free from snow "and assist Signalmen in keeping interlocking plants in operation"; and Carrier's Rule 270 requires Signalmen to "cooperate with track forces in any track work affecting Signal apparatus." These two rules taken together evidently contemplate that Signalmen and trackmen will cooperate with each other during storms as at other times. But it does not follow that, if Signalmen are not on duty during a particular fall of snow, they must necessarily be called just because the track forces are called. It is true that they cannot cooperate with the track forces unless they are on duty, but Rules 158 and 270 can fairly be construed as merely specifying what the Signalmen should do when they are on duty. It is not possible to derive from these rules any **contractual** obligation of the Carrier to call Signalmen for overtime work. Work which can be regarded as exclusively the function of Signalmen must, of course, be performed by Signalmen during overtime periods as well as during regular periods of work. But it is conceded that keeping switches free from snow has always been done by trackmen as well as by Signalmen, and the mere fact that Signalmen when on duty cooperate with trackmen in this work does not, we think, give the Signalmen a contractual right to insist that whenever trackmen are called the Signalmen shall be called regardless of the circumstances and nature of the particular snowfall.

Apparently somewhat conflicting instructions have been issued from time to time to the Signalmen by Carrier officials. On February 8, 1930, the Signal Supervisor of the Division in question wrote the Signal Maintainers that in future storms "you will not wait to be called but use your best judgment and get out on the plant as soon as you think it is necessary. I hope that this will not be abused; at the same time we want to keep down delays." This letter indicated that prior thereto Signalmen when off duty were not called during snowstorms except when the management thought the circumstances were such as to require them. The letter of February 8, 1930, was evidently designed to avoid delays by authorizing the Maintainers to go out on their own initiative if they thought the storm bad enough. The implication was that if they abused this privilege it would be withdrawn.

On December 23, 1939, the Carrier wrote to the Claimants in this case stating that "our present practice and rules . . . are that dispatchers will call Maintainers whenever in their judgment it is considered necessary to expedite and protect traffic." This letter seems to negative the practice outlined in the letter of February 8, 1930.

On March 25, 1940, the Carrier wrote the Employees stating that if during a storm anything goes wrong with the Signal apparatus the Signalmen are immediately called by the management, but that if "wire communications fail and Signalmen are no longer able to contact Division headquarters then they are on their own responsibility and should exercise their judgment as to whether or not their services are needed in the maintenance of Signal apparatus. . . ." (Underscoring ours.) These instructions seem to be a cross between those contained in the letter of February 8, 1930, and those in the letter of December 23, 1939. Under the latest instructions the Signal Maintainers are subject to call at the discretion of the management, but if wire communications fail then Signalmen are to go out or not in accordance with their own best judgment. Does this mean that Signalmen are supposed during snowstorms to keep calling up the Division headquarters in order to make sure that wire communications are not down? Does it mean that the Carrier would hold Signalmen responsible if they failed to test the wires sufficiently often, or if, having found that wire communications had failed, they mistakenly decided not to go out on their own initiative? These are questions which we need not answer since they are not before us; they could be brought before us, however, as grievances in case the carrier took adverse action against a particular employe for alleged negligence or breach of duty.

Although the employees are thus not without a right of review if grievances should arise as a result of these instructions, it would seem desirable

for the parties to agree upon rules which would clarify and make as explicit as possible the duties of the Signal Maintainers in the event of storms. However, this may be, we do not think that the present agreement can be construed as requiring the carrier to call the Signal Maintainers whenever trackmen are called and regardless of the particular circumstances.

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 Employes involved in this dispute are respectively Carrier and Employes 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 no violation of the current agreement between the parties has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of December, 1941.