

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO & EASTERN ILLINOIS RAILROAD

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

(1) That the Carrier violated agreement in effect between itself and the Brotherhood of Maintenance of Way Employees by assigning employes from the Mechanical Department to make repair to track switches;

(2) That Section Foreman N. F. Hatfield and Section Laborer Leonard Bill, Section 31, Danville, Illinois, shall each be paid for a call two (2) hours and forty (40) minutes at time and one-half under the application of Schedule Article 4(b) on June 1st and June 11th, 1945.

EMPLOYEES' STATEMENT OF FACTS: N. F. Hatfield is Section Foreman in charge of Section No. 31 at Danville, Illinois.

Sometime during the nights of June 1 and June 11, 1945, employes in the Mechanical Department (roundhouse) at Danville were called to make repairs to track switches located on the territory comprising Section No. 31.

Agreement effective May 15, 1925 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Preamble of agreement in effect between the Carrier and the Brotherhood reads:

"PREAMBLE.

These rules, effective May 15, 1925, constitute in their entirety an agreement to cover working conditions for the employes in the classes of service represented by the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers in the construction of buildings and structures, track, water service, and other departments in the Maintenance of Way and Structures and in operation of coal chutes and pumping stations, also for laborers employed in and around shops, shop yards, roundhouses and engine terminals. These rules do not apply to working conditions of employes or subordinate officials who hold rank above gang leader or gang foreman."

As will be noted, the "Preamble", which is equivalent to the "Scope", provides that these rules constitute in their entirety an agreement to cover working conditions of employes in the classes of service represented by the Brotherhood in the construction and maintenance of buildings and structures, track, etc. That, of course, means that employes coming within the Scope of that agreement are entitled to the work in connection with construction and maintenance of tracks and switches. By the same token, it is in violation of the Maintenance of Way Agreement to assign employes of other departments, employes who do not come within the Scope of the Maintenance of Way

trackmen have a phone at home for the purpose of taking care of such conditions.

"In denying paymen for these claims, Mr. McBride, stated that this was emergency work and that any body can do it. We cannot agree that any one can respike switch stand, change lug, and adjust rods when section men can be gotten in a very short time. In this particular case there are three tracks leading to round house turntable, and the emergency thing to do was, for any one to spike switch and leave in a safe position, until section men made repairs. Trusting to have your favorable reply a your earliest convenience, I beg to remain,

"Yours truly,

/s/ D. Cellini
"General Chairman."

It will be noted in the last paragraph of his letter, Mr. Cellini takes the position that the proper thing to do in a case of this kind would be to spike the switch and leave in a safe position until sectionmen made repairs. We respectfully submit that in order to spike the switch as the General Chairman suggests, employes involved would have to secure necessary materials and tools, which would entail considerably more time and labor than is required to make adjustment to return the switch to service. In the event of damage to either the switch or stand, it is the practice to spike a switch until such time as sectionmen can make repairs as the General Chairman suggests; however, the type of casting involved in the case at issue is designed for the specific purpose of avoiding damage to switch or stand, and to do as the General Chairman suggests would destroy in part the value of this particular equipment.

The General Chairman further states in his letter above referred to, "We cannot agree that any one respike switch stand, change lug, and adjust rods, etc." We respectfully submit that with this type of casting it is not necessary to respike the switch stand, and the changing of the lug and adjusting of rods referred to merely involves a matter of turning the casting to bring a new lug into position and placing the rod on the new lug.

In summary, the carrier wishes to submit the following:

1. That for many years the employes have recognized that the adjustment of a switch equipped with breakable lugs in emergency does not constitute repairs.
2. That claim of the employes for a call under Article 4(b) of the schedule agreement is invalid on the basis that the employes were neither notified or called, nor performed any work as provided in the rule.
3. That claim for a call for two men is not supported by the work entailed in returning these switches to service.
4. That neither claimant suffered loss of compensation or work by reason of other employes making adjustment necessary to return these switches to service, because had the switch been spiked as suggested by the General Chairman, in this particular instance necessary adjustment could very well have been made by section forces during their regular tour of duty the following day.

In the light of the foregoing facts, we respectfully request that claim of employes be declined.

OPINION OF BOARD: Two switches on Section 31 Danville, Illinois were damaged by being run through,—one during the night of June 1, 1945 and the other during the night of June 11, 1945, and were repaired on the nights in question by Mechanical Department employes. This work was done

by those employes in lieu of having the switches spiked by the switchmen or others for later repairs by the track forces which action the parties are in accord could properly be taken, or in lieu of calling trackmen to make immediate repairs.

As the work of repairing such damaged switches is work covered by the agreement with the Maintenance of Way employes, it should have been so done upon these two occasions. Proper reparation in this case will be made by payment of a call to the M. of W. employe whom it would have been necessary to call upon each occasion in order to do the work that was done in each of these two instances.

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 employe involved in this dispute are respectively carrier and employe 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 claim should be sustained to extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of October, 1946.