

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That the handling of electric skates in connection with the car retarder system at Oak Island Yard is work generally recognized as signal work within the meaning and intent of the Scope rule and other rules of the agreement between the Lehigh Valley Railroad Company and the Brotherhood of Railroad Signalmen of America, dated July 1, 1942.

(b) That Alfred Hummel, Second Trick Signal Maintainer, with assigned working hours from 3:00 P. M. to 11:00 P. M. and Alexander Straglinos, Third Trick Signal Maintainer, with assigned working hours at Oak Island Yard from 11:00 P. M. to 7:00 A. M., be paid eight (8) hours pay at the Signal Maintainer's rate for each day they are held off their respective tours of duty from date (September 12, 1945) the Carrier removed certain signal work (handling of electric skates) out from under the scope and operation of the Signalmen's agreement and assigned such work to the employees not classified under said agreement, until the work in question is placed back under the scope and operation of the Signalmen's agreement and Signal Maintainers Hummel and Straglinos are restored to their former positions.

BROTHERHOOD'S STATEMENT OF FACTS: In February, 1929, a car retarder system was placed in operation at Oak Island Yard at which time there were three Signal Maintainer's positions established with assigned working hours as follows: First trick from 7:00 A. M. to 3:00 P. M.; second trick from 3:00 P. M. to 11:00 P. M.; third trick from 11:00 P. M. to 7:00 A. M., with twenty (20) minute lunch period.

The assigned duties of these employees were to look after the general maintenance of the retarder plant and the handling of electric skates in connection with the operation of the car retarder system. This arrangement continued in effect until October, 1939, when the handling of electric skates was assigned to employees covered by the Trainmen's agreement. The representative of the Trainmen's organization took the position that the handling of electric skates was not their work. However, they continued to perform this service on the second trick until March, 1941, and on the third trick until May, 1942, when the positions of Signal Maintainer were restored and the handling of the electric skates was again assigned to the employees classified and paid under the Signalmen's agreement; namely, Signal Maintainers, who continued to handle this work until September 12, 1945 when the Carrier again assigned such work to the employees covered by the Trainmen's agreement.

This claim represents an effort on the part of the Employees to impose an uneconomical and inefficient practice upon the Carrier based upon the assertion of a work monopoly, which is not supported by the terms of the agreement, and which the agreement was never intended to bring about.

The handling of electric skates in a car retarder system is not work generally recognized as signal work within the meaning or intent of the scope rule of the current agreement and, therefore, there has been no violation by the Carrier of this or any other rule of the agreement in effect in requiring other than signalmen to handle electric skates in the operation of its car retarder system.

In consideration of the above facts, this claim should be denied.

OPINION OF BOARD: The record shows in 1929, a car retarder system was installed in the Oak Island Yard, New Jersey. At that time three Signal Maintainers, i. e., employees assigned to perform work generally recognized as signal work and classified as Signalmen or Signal Maintainers (See agreement effective between the parties, now designated Sec. 7, Article 1, agreement dated July 1, 1942) were employed in this yard working in three tricks around the clock.

Either in 1929 or 1931 electric skate machines which constitute an integral and component part of the car retarding systems were installed in this yard. An electric skate weighs approximately forty pounds and is used only in emergency; it is operated electrically from one of the towers; this operation consists in placing the skate on the rail from its position lying adjacent to the rail, in the event the car retarder apparatus fails to retard sufficiently the operation of any car passing through so as to prevent its striking whatever cars that may be on the track with such force as to cause either broken equipment or the shifting or the damaging of the contents of the car itself. During its use it is usually dragged by the car a distance of two to ten car lengths from the machine which operates it; thereafter it is necessary to carry the skate back to the machine and replace it in readiness when occasion again requires its use. The replacing of the electric skate in its container is accomplished by laying it on the levers or arms of the machine and shoving it in so that a shaft on the arm fits into a slot in the skate.

It is agreed that for a period of ten years following the installation of the car retarder system, the Signal Maintainers replaced the electric skate after its use in its container.

In 1939, the Carrier cancelled the second and third trick Signal Maintainers' positions in this yard; for some time thereafter, when the electric skate machine was used during the second and third tricks, a Signal Maintainer was called to replace it in its container. In the latter part of 1941, the Carrier ceased to use Signal Maintainers to replace the electric skate in its container and assigned this work to its Trainmen or Switchmen. During the month of May, 1942, the second and third trick Signal Maintainers' positions were restored at the Oak Island Yard and again assumed the duty of placing the electric skate in its container; they continued to handle this work until September 12, 1945, and on that date Claimants were removed from their positions and the portion of the work as heretofore specified was turned over to Trainmen.

The first question to be determined is whether or not the replacing of the electric skate in its container comes within the coverage of the Signalmen's Agreement. "It is well settled that work covered by one agreement cannot be performed by employees or others not included within the class specified in the agreement." Award 1486, and awards too numerous to cite.

That part of the Scope Rule pertinent to this case is in substance as follows: It covers "the rates of pay, hours of service and working conditions of all employees in the signal department . . . engaged in the work of construction, installation, inspecting, testing, maintenance and repair of . . . car retarder systems . . . and all other work generally recognized as signal work."

The Carrier contends that the replacing of the electric skate in its container is a part of the Trainmen's duty, as it constitutes part of the operation, the doing or performing of action, as the operations of a machine, within the common concept of the word and, therefore, does not come within the scope agreement here being considered.

We deem it unnecessary to detail the various qualifications and duties of signalmen as has been pointed out in previous awards. Suffice it is to say within the contemplation of the Scope Rule, the replacing of the electric skate into its container is not part of an operative process; it is in line of maintenance, up-keep, preparing the machine for further use—an obligation charged to the Signal Maintainers under the Scope Rule—and is their responsibility so that in event of improper maintenance, they may be charged accordingly.

The method of handling the retarding of cars as hereto set out constitutes operation; when the cars are properly retarded to meet the situation with which the operator is confronted, the operation by necessity ceases. This fact has unquestionably been recognized by the Carrier as disclosed by the record. We are driven to the conclusion under the facts and circumstances of the record that the work here involved properly belongs to the Signal Maintainers within the contemplation of the Scope Agreement.

With reference to Section (b) of the claim; it was argued in behalf of the Carrier, in addition to carrier's contention that this work is operation work, that when the two positions were taken off in December 1939 the record does not indicate that protest was made by the Organization, but after the decision of the reviewing board March 6, 1945, the claim was filed with the Carrier. Therefore, for a period of six years, the Employees acquiesced that this was work not covered by the Agreement. However, the record does disclose that when the Signal Maintainers were replaced in 1942, they continued to do this work until the positions were abolished September 12, 1945, when the work was again turned over to the Trainmen. The record does not disclose whether the condition with reference to this work is the same as prior to the reestablishment of the two positions or not, or the quantity of such work remaining since September 12, 1945. For the reasons stated herein, Sections (a) and (b) of the claim are sustained.

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 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 Sections (a) and (b) of the claim are sustained.

AWARD

Sections (a) and (b) of the claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3365
DOCKET SG-3394

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America.

NAME OF CARRIER: Lehigh Valley Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret it in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The question presented for Interpretation is whether or not Signal Maintainer Alexander Straglinos, who was removed from the position of signal maintainer as disclosed by the factual situation appearing in Award 3365, is entitled to be paid as contended for in Section (b) of the claim as appearing in Docket SG-3394, or is entitled to the difference between a lesser-pay position which he held after being removed as signal maintainer during the period of time he held the lesser position and until he was reestablished in the position from which he was removed.

It will be noted by the award, the claim as presented was sustained in its entirety. See Award 3365. As affirmatively appears from the record, and all matters incident to it, the issue now contended for by the carrier was never raised or argued. Under the circumstances, the privilege and opportunity to consider the bona fides or propriety of such an offset, as now contended for by the carrier, was not before the Referee. The Referee could not under the circumstances determine the effect of any rule of the agreement with reference thereto. As in the nature of judgments determining the issues joined, so too must awards of this division contain the conception of finality. For the reasons given herein, it is not now proper through an interpretation to consider this issue.

The Employee's contention in such respect is sustained.

Referee Fred W. Messmore, who sat with the Division as a Member when Award No. 3365 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1947.