

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**BALTIMORE & OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Anthony Bruno, Foreman, Section "C," Robey Street, shall be paid for a call, two hours and forty minutes at time and one-half rate, on February 28, 1946, on account of that employees in other departments were called upon or permitted to, during the evening or night of that date, make repair to No. 16 switch at Robey Street.

EMPLOYES' STATEMENT OF FACTS: Anthony Bruno is Section Foreman in charge of Section "C," Robey Street, Chicago. Sometime during the night of February 28, 1946, employees in other departments were called upon or permitted to make repair to No. 16 switch located on the territory comprising Section "C," Robey Street Yard.

Agreement effective December 1, 1930, between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On February 28, 1946, Section Foreman Bruno discovered that No. 16 switch at the west end of Robey Yard, Chicago, had been run through and that some unknown person had reversed the crank on this switch and left the switch out of adjustment. On his time sheet for this date Foreman Bruno charged six hours to repairing and adjusting this switch and he also claimed four hours at prorata rate because of not having been called to make the repairs to the switch.

POSITION OF EMPLOYEES: As stated by the Employees in their Statement of Facts, sometime during the night of February 28, 1946, it became necessary to make repairs to Number 16 switch, which is located on the territory comprising Section "C," Robey Street Yard, and such repairs were made by employees of the Carrier who had no seniority in the Track Department.

The Scope Rule of the effective agreement provides as follows:

"SCOPE

It is understood that these rules shall apply to all employees who perform the work specified herein (not including those above the rank of Foreman) in the Maintenance of Way Department, also including Crossing Flagmen and Gatemen."

clude such a simple operation would not only be to read into the rule something that was never contemplated by its negotiators but would also disregard the mutual interpretation given it ever since its negotiation. No other language in the rules relied upon by the Employees has any bearing on the instant claim.

Award No. 2932 of your Board covered claims of Signalmen on the Southern Railway but involved the same principle and the following is quoted from the opinion of Referee Carter in that award:

"The Board recognizes the necessity of protecting the work of signalmen as it does any other group under a collective agreement. But this does not mean that the simple and ordinary work that is somewhat incidental to any position or job and requiring little time to perform, cannot be performed as a routine matter without violating the current Agreement. To come within the scope of the Agreement it must be work requiring the exercise of some degree of skill possessed by a signalman."

As is shown above, reversing the crank when a lug has been broken as the result of a switch being run through by cars or locomotives in their charge has always been considered as work that is incidental to yardmen's positions. Therefore, in accordance with the principle outlined in the above opinion, it may be performed as a routine matter by other than Maintenance of Way employees without violating the Maintenance of Way Agreement.

The Carrier here wishes to make plain to your Board that it is not attempting to exclude from that work which it agrees is reserved to Maintenance of Way employees the further operations necessary to place a damaged switch in complete adjustment so that it may be used with full safety under normal operating conditions. That is work requiring the skill and experience of this class and in the instant case was performed by the claimant during the hours of his regular assignment on the morning after the switch had been run through, as is evidenced by the Carrier's Statement of Facts in which it is pointed out that Foreman Bruno reported he had spent 6 hours repairing and adjusting No. 16 switch on February 28, 1946. The Carrier understands that it was upon a showing of the performance of such final repair and adjustment by other than Maintenance of Way employees that your Board sustained (to the extent indicated in the opinion and Findings) the claim in Award 3308 to which the Employees have also referred.

As indicated above, it is the Carrier's position that reversing the crank on a switch in order to continue temporary use of such switch after the lug has been broken is not work reserved to Maintenance of Way employees under their agreement. In this particular case the person responsible for running through the switch involved made no report of the damage to the switch to the Yardmaster or other proper officer of the Carrier. It appears highly probable that the guilty party reversed the crank himself without authority or instruction in order to conceal his guilt. Therefore, even if there had been an obligation on the part of the Carrier to immediately call out the foreman, which is denied, there was no knowledge on the part of the Carrier that the repairs and adjustment to the switch were necessary until the claimant himself discovered this to be the case and consequently there was no opportunity to call him for service until after he was actually on duty. The Carrier should certainly not be penalized for failing to call out an employee when it had no knowledge of any work for him to do.

For the reasons set forth above, the claim of the Employees is completely without merit and it is therefore respectfully requested that it be denied.

OPINION OF BOARD: The question here involved is whether or not the reversing of the crank on a switch, which has the effect of changing the lug which has been broken, after the switch has been "run through" is work within the scope of the Maintenance of Way Employees' agreement with the Carrier. It is recognized that the maintaining or repairing of switches is work within the scope of the Maintenance of Way agreement and must be

done by employees of that department. It is the thought of the Carrier that the work of reversing the crank, after the switch has been "run through," is of such a nature that it does not come within the scope of the agreement and can be done by other employees, such as yardmen, who have done this work for many years.

Reversing the crank, which requires a change in the operating part of the switch, is of a temporary nature but does have the effect of placing the switch back in operation. It has the effect of repairing the switch. We can see no distinguishing difference in the nature of the repair, whether temporary or permanent, except the extent or degree thereof. Both are intended to and do place the switch back in operation and require the necessary skill to perform that service. There are other ways in which a switch that has been "run through" can be handled but when it is repaired, either temporary or permanent, the work required to do so comes within the scope of the Maintenance of Way Employees' agreement and the work must be done by them.

We have examined the holding of the Board in Award 2932 but do not think the work here involved is of such an incidental nature as to bring it within the principle therein announced. We think it comparable in principle with Award 3308 wherein the same type of work was involved.

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 there has been a violation of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1947.