

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad that:

(a) The Carrier violated the Signalmen's Agreement on Wednesday, February 22, 1950 when it failed to utilize the services of Signal Maintainer Joe Gaines and his helper, Ed Spencer, located at Jackson, Ky., in connection with a rail relay job on their maintenance territory.

(b) Signal Maintainer Gaines and Helper Spencer be paid eight hours each at their respective punitive rates of pay as compensation for the services they were deprived of as described in part (a) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, February 21, 1950, Signal Maintainer Joe Gaines was notified to be on hand at 7:00 A. M. on Wednesday, February 22, 1950, to protect centralized traffic control and signal facilities on his assigned maintenance territory account of a rail relay project at or near Mile Posts 213 and 214.

About 5:00 P.M. on February 21, 1950, Gaines was informed by a superior officer of the Carrier that he would not be required to report on February 22, 1950.

* * * *

Notwithstanding the absence of the Signal Maintainer and his Helper, the track forces proceeded with the rail relay program on February 22, 1950, on the C.T.C. maintenance territory assigned to their care, and in so doing opened a track circuit governing the automatic signals in C.T.C. territory and, presumably, by such action on the part of track forces the automatic signals were inoperative for the duration of the rail relaying and were not secured in their most restrictive indication.

The track circuit which serves as a medium to control the automatic signals in this C.T.C. territory uses the track rails as a component part of the conductor of the track circuit, and the rail joints are bonded to assure a constant and dependable metallic path for the track circuit. The integrity of this particular track circuit was destroyed when the track forces opened the track, and concurrently opened the track circuit by severing the rail joint bonds and removed the rails.

"The basis for this claim is not predicated upon a violation of the Signal Inspection Code nor is it based upon violation of the Carrier's operating rules. We take the position that signal work was performed when the bonds were broken and removed by those not covered by the Signalmen's Agreement."

As shown in Carrier's Statement of Facts, when the old 100 lb. rail was removed by the use of crane the bond wire between the 100 lb. rail and the 132 lb. rail that had been previously laid was broken. The actual breaking of the circuit was incidental to and in connection with the removal of the rail. Signalmen are men of skill, training and experience. The breaking of the bond wire, or wires, by crane incidental to removal of the old rail required no skill. It is not the practice on this Carrier, when relaying rail, for signalmen to break the first bond wire even though they may be present, as the bond breaks automatically when the rail is set out of track.

Further, the scope rule of the signalmen's agreement provides:

"This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the **construction, installation, repair**, inspecting, testing and **maintenance** of all interlocking systems and devices; signals and signaling systems . . . etc." (Emphasis added.)

A bond wire being broken by a crane incidental to the removal of rail could in no manner be considered as construction, installation, repair or maintenance. It should be borne in mind that it was not a case of bond being applied, but was case of bond wire being broken simply by, and concurrently with, removal of the rail by crane.

As no signalman's work was performed, the Carrier insists that the claim be denied.

All factual data submitted in support of the Carrier's position has been presented to duly authorized representatives of the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: We think the claimants have made out their case under their scope rule which provides "This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the construction, installation, repair, inspecting, testing and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; * * * together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

Claimants say "The basis for this claim is not predicated upon a violation of the Signal Inspection Code, nor is it based upon violation of the Carrier's operating rules. We take the position that signal work was performed when the bonds were broken and removed by those not covered by the Signalman's Agreement."

We might have to stretch a point a little to have this work covered by the word "maintenance," but not unreasonably so, because maintenance would ordinarily include the severance and re-application of the bond, which in the normal course of operation would have been done in the presence of the claimant.

However, claimant need not necessarily prove it was maintenance work as such. The severance of the bond was work on an appurtenance and the carrier recognizes that the rail bond is an appurtenance which term is explicitly covered in the scope rule.

When claimants show that the work was covered by their scope rule, they were entitled to be called on the day for which compensation is sought.

Rule 303 of the Carrier's Maintenance of Way Rules reads:

"Changing Rails—Except in emergency cases, Section Foreman shall not change rails where joints are bonded for electric circuit unless the Signal Maintainer is present to look after bond wires * * *"

The organization with commendable frankness admits that these rules "are not subject to being applied by this Board," but suggests that we may consider them as evidence to show that the work that the track men were doing contemplated at least that claimants be present. We think that is correct. It shows that it was "generally recognized as signal work" within the scope rule.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.