

Award No. 10417

Docket No. SG-10211

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the current Signalmen's Agreement (particularly the Scope Rule) when it assigned and/or permitted section forces (employees of another craft) to clean snow and ice from power interlocking switches at CS Cabin on March 15, 1957, from 1:30 A. M. to 7:30 A. M.

(b) The Carrier now compensate Signal Maintainer R. S. Kennard and Signal Helper John Vergne, regular assignees on CS Cabin territory, for the amount of hours shown in part (a), at their respective overtime rates of pay, for March 15, 1957. [Carrier's File No. SG-111]

EMPLOYEES STATEMENT OF FACTS: On March 15, 1957, the Carrier called and used section laborers to remove snow and ice from the power-operated switches at CS Cabin. Signal Maintainer R. S. Kennard is assigned to, in charge of, and responsible for the proper maintenance and repair of all signal facilities on the CS Cabin signal maintenance territory. Signal Helper John Vergne is the regular assigned Signal Helper on the CS Cabin territory.

The section laborers worked from 1:30 A. M. to 7:30 A. M. on March 15, 1957, removing snow and ice from the power-operated switches at CS Cabin. Inasmuch as the Carrier called and used section laborers to perform work which properly accrues to employees covered by the current Signalmen's Agreement, a claim was filed with the Carrier in behalf of Signal Maintainer Kennard and Signal Helper Vergne for the amount of time that the section laborers were used in removing snow and ice from the power-operated switches at CS Cabin.

The claim was filed by Local Chairman S. J. Moffett with Mr. D. F. Apple, Division Engineer, in a letter dated March 27, 1957, as follows:

station platforms to aid them in pulling loaded baggage trucks along such platforms. The Referee reasoned that this was an emergency condition requiring incidental work as a safety measure, and while such case may have no direct bearing on the instant, case, its doctrine plainly fails to support the contention of the Employees in the case at issue.

Rule Coverage on Incidental Snow Removal By Signal Employees

The awards which have been discussed above all adhere to the basic principle that snow removal is the primary job of track laborers, but that signal employees may do such work incidental to performance of their regular work or in emergency when track laborers may not be able to do such work.

Reference to the portion of Rule 65 of the Maintenance of Way Agreement quoted above by the Carrier will show that the parties to the two collective bargaining agreements here involved recognized just that principle annunciated by the Board. In other words, in enumerating in Rule 65 of the Maintenance of Way Agreement the work to be done by section and extra gang laborers, the parties to that agreement specifically reserved to signal employees the right to do the incidental snow and ice cleaning work, whereas in the signalmen's agreement there is nothing to specifically cover. This follows the general plan of collective bargaining, it not being practical to line out in a scope rule every item which the employees of that group might perform incidentally. A good illustration is telephoning. Nowhere in the scope rule for signal employees is there anything covering in specific manner the use of the telephone, but everyone knows the signalman uses the phone in connection with his work as something incidental to his primary duties. Snow cleaning by signal employees stands in the same general relationship.

Conclusions

The Carrier has shown that neither the rules of the two agreements involved nor the awards in antecedent cases furnish any proper basis for the claim in this case, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employee representatives.

OPINION OF BOARD: On March 15, 1957 track men were called out at 1:30 A. M. to clean snow and ice from switches at CS Cabin. Time worked was from 1:30 A. M. to 7:30 A. M.

The switches are power-operated switches at the aforesaid location. The signal men assigned to this area were not called.

The local chairman filed with the Division Engineer in a letter dated March 27, 1957 a claim alleging violation of Rule No. 1 of the Agreement between the Carrier and Organization for R. S. Kennard at the rate of 5 hours at \$3.4050 per hour and for John Vergne at the rate of 5 hours at \$2.9950 per hour. The rule in question is stated as follows:

"RULE 1—SCOPE

"This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair,

and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal shops, and all other work generally recognized as signal work. It is understood the classifications provided by Rules 2, 3, 4, 5, and 6 include all the employees of the signal department performing the work described in this rule."

The claim herein was processed through the regular channels, and was denied by the Assistant Vice President-Labor Relations in a letter dated May 27, 1957 as follows:

"This refers further to your letter of May 6, 1957, concerning Signalmen's Grievance Item No. 111, reading:

'Claim for compensation at overtime rate for Signal Maintainer R. S. Kennard and Signal Helper John Vergne for time between the hours of 1:30 A. M. and 7:30 A. M. on March 15, 1957, when track men were called to clean snow and ice from interlocking switches at CS Cabin.'

"On March 15, 1957, during a snow storm, it was necessary to call out laborers to sweep snow at CS Cabin between the hours of 1:30 A. M. and 7:30 P. M.

"In cases of heavy snow storms the local officers not only call on track laborers but also signalmen and any other available employees, when necessary.

"In this case the above employees were able to handle the work and it was not necessary to call out any other employees.

"Sweeping snow from switches is not work assigned exclusively to any craft and your claim is declined."

The Organization argues that the work in question at said time and place should have been assigned to them because it was incidental to their work in maintaining of power-operated switches.

The Carrier claims that in as much as Claimants weren't called to maintain these switches the claim should be denied. In their submission, they also cite Rule 66 sec. (b) of the Agreement between the Maintenance of Way Employees and the Carrier, indicating that there is reserved to the signalmen the right of cleaning snow in connection with signals and interlocking system. Rule 66 Section (b) is as follows:

"(b) In carrying out the principles of Paragraph (a), section and extra gangs will perform work to which they are entitled under the rules of this agreement in connection with the constructions, maintenance, and/or removal of roadway and track facilities, such as rail laying; tie renewals (except on bridges and structures, but this will not preclude section and extra forces from laying rail or doing other track work on bridges or structures); ballasting; lining and surfacing track; installing, maintaining, and removing frog and switches, including crossing frogs, (except welding or other work done on frogs and switches by blacksmiths); ditching and road bed work not performed by employees operating roadway machines under the

roadway machine operator classifications; mowing and cleaning right of way (except such cleaning of snow, ice, sand and other materials as signal employees may do in connection with signals and interlocker facilities); patrolling and watching track where bridges or structures are not involved; operating Mole ballast cleaners and other roadway and track work in connection therewith; installing and maintaining drain pipes where the work does not require structural work or the skill of B&B carpenters; and similar work heretofore assigned to track employees. This rule or others shall not preclude the use of section and extra gangs to make repairs to right of way fences, to clean debris and around bridges or structures, to fill fire barrels, to do general cleaning or to do other miscellaneous work which they have performed in the past. This rule does not include work performed by shopmen in connection with the maintenance of shops, engine-houses, and other facilities within shop limits, and shop work done at Barboursville Reclamation Plant and at other points in connection with maintenance of way and structures tools, equipment, and materials." (Emphasis ours.)

Many past awards of this Board have been quoted and distinguished by the respective parties herein, however both parties place considerable reliance on Award No. 4593 of this Board, Carter, Referee, and the pertinent parts of said award are as follows:

"Referee Carter said:

"We think that work in connection with keeping tracks and switches clear of snow ordinarily belongs to section men. In emergencies, of course, section men may be augmented by other available employees . . . Signalmen are charged with the duty of maintaining the signal system and power controlled switches and interlockings. We think a signalman engaged in signal maintenance may properly remove snow and ice to insure the proper operation of signals, electrically controlled switches and interlockings. Such work is incidental to work of his craft. In the present case the two signalmen working overtime were cleaning switches within the area controlled by Tower No. 2. The record discloses that a bad storm was imminent and the Carrier decided that signalmen were required on duty to protect the service. The record does not disclose that the work performed was not incidental to this service. . . . Here, the work performed by the signalmen involved keeping the interlocking operating, the removal of snow and ice was incidental to that function and proper to be performed by signalmen. Unless the removal of snow and ice is in connection with work of the Signalmen's craft, and in furtherance thereof, it belongs to section men."

The decisions and rules involved therein are distinguishable from the instant case.

The removal of snow and ice is historically and traditionally work that is assigned to the Maintenance of Way Employees, however, it is true that the removal of snow and ice is interwoven with the work of the Signal Maintainer when it is incidental to his regular work in his craft.

The present situation did not require the attention of the Signal Maintainer in the performance of his work, therefore, he was not called during the hours of 1:30 A. M. to 7:30 A. M. on March 15, 1957 by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The claim should be denied for the reason that the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 14th day of March 1962.