

Award No. 11405

Docket No. SG-11178

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Terminal Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on or about April 28, 1958, the Carrier assigned and/or permitted Maintenance of Way employees to perform generally recognized signal work in repairing the pipe-connected derail located at Switch 4548.

(b) The Carrier now be required to pay the following listed signal employees of the signal construction gang for two hours each at their respective pro-rata rates of pay for the above violation: Foreman, Chas. Warford; Leadman, L. F. Edwards; Signalmen, J. Whittington, R. Norman; Assistants, C. E. Blackmore and C. L. Jones.
[Carrier's file No. SG-22]

EMPLOYEES' STATEMENT OF FACTS: On industrial track 4548 located at Van Brunt Blvd. in Kansas City, Missouri, this Carrier had in service a mechanically operated pipe-connected Hays Derail. This pipe-connected derail, as well as all other pipe-connected derails on this Carrier's property, was installed by Signal Department employees and has been maintained by Signal Department employees since installation.

On or about April 28, 1958, during a switching move, a freight car broke loose on track 4548 and was derailed by the pipe connected derail. As a result of the freight car derailling, several lengths of the pipe line, several pipe carriers, pipe line connections, cranks, and compensators were damaged. Instead of calling the proper Signal Department forces to repair the damaged derail, the Carrier assigned track men and track welders to make the repairs.

Inasmuch as the Carrier assigned the track forces to perform work which is covered by the Scope of the Signalmen's Agreement, General Chairman R. E. Wilhelm filed a claim with Signal Engineer V. O. Dryer under date of May 1, 1958, as follows:

SCOPE RULE—

(d) Pipe lines and pipe line connections, cranks, compensators, foundations and supports for mechanically operated switch and signal apparatus.

Although on the surface it might appear that the above quoted Scope Rule would give the work involved in the instant claim to the signalmen, a careful study of said quoted Scope Rule would indicate that the language used is ambiguous and subject to two interpretations. The General Chairman of the Signalmen's Organization interprets Scope Rule (d) to mean the same as if the last part of the rule read—and supports for mechanically operated switch or signal apparatus. The Carrier invites your Board's attention to the fact that the Scope Rule does not say switch or signal apparatus, but, clearly states switch and signal apparatus. In any location on the Kansas City Terminal Railway Company where protective derail is connected to a switch and there is signal apparatus also connected with such arrangement the signal forces always do the pipe and pipe connection work connecting such derail to switches. In this particular case there is no signal apparatus involved and the Carrier made the decision therefor that the piping could be repaired by the Maintenance of Way forces who repaired the switch. The Carrier respectfully submits that all of the men who have made claim for this particular repair work were on duty and under full pay at the time the two track men made the repairs to this piping. None of the claimants lost any time as a result of the Carrier's handling of this repair work. Therefore, the Carrier requests that instant claim be denied.

The Carrier firmly believes that based upon the ambiguity in the Signalmen's Scope Rule above referred to that instant claim should be denied; however, in any event, if your honorable Board should decide that the Scope Rule was violated in this particular incident, the penalty assessed should not exceed that of an allowance for two men for two hours each which is the actual time consumed by the track men who did the repairs.

All of the data herein presented has heretofore been discussed in conference with the representative of the claimants during the handling of this case on the property.

OPINION OF BOARD: The Kansas City Terminal Railway Company has an industry track designated as Track 4558. On April 26, 1958, a box car which had been set in at the industry served by Track 4558 rolled away and ran over the protective derail causing damage to the pipe that connected the derail to the hand-thrown switch. It, therefore, became necessary to make repairs to this piping and pipe connections. Maintenance of Way forces did the work required on the piping connection that lead from the hand-thrown switch to this protective derail.

Petitioner contends that the disputed work is embraced within the Scope Rule of its Agreement with the Carrier, and that all pipe line connected derails on this Carrier's property have been exclusively installed and maintained by Signal Department employees. The Carrier disputes the Scope Rule coverage but does not deny the practice alleged by Petitioner. The record also shows that the General Chairman did on the date in question make an inspection of the damaged pipe and made some temporary repairs. We therefore find, that the parties by their conduct have agreed the claimed work is covered by the Signalmen's Agreement, and that the Carrier violated that Agreement when Maintenance of Way forces performed the work. (Awards 2436, 5082, 5306, 7166, and 10122.)

Petitioner claims two hours pay each at pro-rata rates for six employes. Carrier admits that four man hours of work were consumed by Maintenance of Way forces. We do not find sufficient evidence in the record to determine this issue; since the burden of proof is upon the Petitioner and we do not believe that Petitioner has met that burden, the claim will be sustained for the admitted four man hours at pro-rata rate of pay.

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 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

That there has been a violation of the Agreement.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1963.