

Award No. 11507
Docket No. SG-11003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

John H. Dorsey, 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 Company that:

(a) The Carrier violated the Signalmen's Agreement, when on August 20, 1957, it assigned other than signal employes covered by the Signalmen's Agreement to cause signals 281 and 662 to display the stop and proceed indication for the purpose of conducting efficiency tests.

(b) A minimum call of two hours and forty minutes at the over-time rate for a Signalman and Helper, be paid to C. Webster and Charles Grant, Maintainer and Helper, respectively, on the territory on date violation occurred at signal 281, and G. L. Dunaway and Herman Mize, Maintainer and Helper, respectively, on the territory on date violation occurred at signal 662. [Carrier' file G-304-2, G-304]

EMPLOYEES' STATEMENT OF FACTS: On August 20, 1957, Mr. C. Webster was the regularly assigned Signal Maintainer on the signal district that includes signal 281 at Butler, and Mr. Charles Grant was his regularly assigned Signal Helper; Mr. G. L. Dunaway was the regularly assigned Signal Maintainer on the signal district that includes signal 662 at Cynthiana, and Mr. Herman Mize was his regularly assigned Signal Helper.

On that date the Carrier allowed one of its officials and/or others not covered by the Signalmen's Agreement to cause signals 281 and 662 to display "stop" indication for the purpose of conducting efficiency tests. Signal 281 was placed in "stop" position by the use of a shunt (or short) placed across a circuit, and signal 662 was placed in "stop" position by having its control wire disconnected.

Local Chairman J.T. Bass wrote as follows to Signal Supervisor Frank Hacker on September 4, 1957:

It is also apparent that the shunting of a circuit by use of a shunt wire, as in the case involving Signal 281, does not constitute "work" reserved exclusively to employees covered by the signalmen's agreement.

It is, therefore, obvious there is no basis for the claim involving Signal 281, contractually or otherwise and that same should be declined.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: Insofar as the claim relates to other than signal employees disconnecting control wires to cause Signal 662 to display stop position, Carrier admits violation of the Agreement. We will, therefore, sustain the claim in this respect with a monetary award to Claimants Dunaway and Mize as prayed for in the claim.

The remaining issue is whether Carrier's supervisory personnel by applying a temporary shunt, in the course of an efficiency test, which caused Signal 281 to assume its most restrictive indication, violated the Agreement.

There is no question but that the installation of a temporary shunt is work on the signal system circuit and during the time the shunt is in place it is an integral part of the circuit.

It was established, as far back as Award No. 3688, that the installation of a temporary shunt is work generally recognized as Signalmen's. This finding comes within the broader finding that all work on signal line circuits is generally recognized as being encompassed within the contractual phrase

"any other work generally recognized as signal work."

See, and compare, as examples, Awards Nos. 1501, 3688, 6584, 8069 and 8072.

We will sustain the claim in its entirety.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11507,
DOCKET SG-11003

The Majority's decision, in connection with Carrier's supervisory personnel applying a temporary shunt across the rails in making efficiency tests to place the signal in stop position, is not only palpably wrong, but obviously is the result of disregarding the facts in the first instance, and then basing its decision on Award No. 3688.

The following is an extract from the decision:

" * * * There is no question but that the installation of a temporary shunt is work on the signal system circuit and during the time the shunt is in place it is an integral part of the circuit.

"It was established, as far back as Award No. 3688, that the installation of a temporary shunt is work generally recognized as Signalmen's. This finding comes within the broader finding that all work on signal line circuits is generally recognized as being encompassed within the contractual phrase

'any and other work generally recognized as signal work.'

See, and compare, as examples, Awards Nos. 1501, 3688, 6584, 8069 and 8072.

"We will sustain the claim in its entirety."

It is well recognized that shunting a track circuit can be accomplished in a number of ways, i.e.:

- (1) opening a switch in signal territory,
- (2) throwing a derail in signal territory,
- (3) making metallic contact between the two rails in signal territory.

Conductors, trainmen, engineers, firemen and numerous other employees shunt track circuits every time they open a switch or throw a derail in signal territory. In thus shunting the circuit, they create the same conditions insofar as crossing signals, wayside signals in the territory involved, and interlocking and C.T.C. machines are concerned, as when the circuit is shunted by use of machines, locomotives, cars, etc., or by use of a shunt wire as was done in the instant case.

Furthermore, Carrier submits that it has been the practice for many years for officials to make efficiency tests, which included the use of a shunt wire placed across the rails in making automatic block or interlocking signal tests. The placing of a shunt wire across the rails has never been recognized as signal work.

All that is required in placing, not "installation," a shunt wire across the rails is to fasten same to the base of each rail with set screws attached to the shunt wire. This obviously requires no skill or knowledge of work recognized as signalmen's work and does not constitute "work" reserved exclusively to employees covered by the Signalmen's Agreement.

The shunt wire in no way endangers the proper operation of the signal system, nor is it "an integral part of the circuit."

The Majority also states:

"It was established, as far back as Award No. 3688, that the installation of a temporary shunt is work generally recognized as Signalmen's. * * *"

Award No. 3688 involved a dispute originating on electrified territory of the Pennsylvania Railroad. In evidence in that case were special instructions and circular letters issued by the Carrier wherein the "qualified employe" mentioned therein as the party to place the shunt was identified as a signalman.

This case does not involve similar circumstances or similar instructions and is, therefore, distinguishable from Award 3688. In addition, Award 5428 distinguished Award 3688. Award 5428 states, in part, as follows:

"The question presented by this submission is whether or not the placing of a temporary shunt on a track circuit while a cribbing machine is being removed from the tracks constitutes signal work falling within the scope of the Signal Department Employees' Agreement of June 1, 1944, and to be performed exclusively by employees of such class. The work was done upon this property by Maintenance of Way employees. (Emphasis ours.)

"The Scope Rule in the agreement before us reads:

"This agreement covers rates of pay, hours of service and working conditions of all employees specified in Article 1 engaged in the installation and maintenance of signal apparatus and performing work generally recognized as signal work." (Emphasis added by Referee.)

"See also Rule 4.

"The act complained of clearly does not fall within the scope of the first emphasized phrase. True, 'maintenance' contemplates the proper functioning of the signals as stated in Award No. 3688, but when considered in connection with the use of a lining bar or some other device or a shunt of their own design long applied by non-skilled employees on this line, we are not impressed with the contention of the intricacies involved in its proper application and interference with the proper functioning of the signal system. In interpreting the general language contained in the second emphasized

phrase, we must resort to custom and practice to ascertain if the work in question has been generally recognized as signal work. * * *

The Majority then states:

"This finding comes within the broader finding that all work on signal line circuits is generally recognized as being encompassed within the contractual phrase

'any and other work generally recognized as signal work.'

See, and compare, as examples, Awards Nos. 1501, 3688, 6584, 8069 and 8072."

Award 5428, quoted above, has put this matter to rest years ago wherein we held:

"* * * In interpreting the general language contained in the second emphasized phrase, we must resort to custom and practice to ascertain if the work in question has been generally recognized as signal work. * * *"

With respect to the Awards of this Board cited by the Majority in support of his decision, a careful analysis will indicate that they are not at point. For example — Award 1501 covers a telephone line gang which was engaged in repairing and reconstructing the Carrier's pole line between St. Joseph and Napier, Missouri, and in doing so replaced certain wires and fixtures which were used for signals.

Award 6584 and 8069 involve incidents where the bonds were broken and removed by those not covered by the Signalmen's Agreement.

Award 8072 included bonding of track rails, installing insulated joints, installing wires to the local source of energy and connecting these with the relay, etc.

The above awards are far afield from the question at issue in this case.

For these reasons, among others, we dissent.

R. F. Black

R. A. DeRossett

W. F. Euker

G. L. Naylor

W. M. Roberts