

Award No. 11595

Docket No. SG-10619

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, 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, particularly the Scope Rule, when on or about April 16, 17, 18, 24, and 29, 1957, it assigned to employes or other persons not covered by the agreement the work of placing a shunt on track circuits behind the tamping machine on miles 22, 22, 23, 23 and 24 respectively.

(b) Signal Maintainer H. V. Coates, on whose territory the work was performed, be compensated for a minimum call of 2 hours and 40 minutes at the rate of time and one-half, for each of the dates April 16, 17, 18, 24, and 29, 1957. [Carrier's File G-304-2, G-304]

EMPLOYEES' STATEMENT OF FACTS: On April 16, 1957, at mile post 22, on April 17 and 18, 1957, at mile post 22 and 23, and on April 24 and 29, 1957, at mile post 23 and 24, the Carrier used a tie tamping machine while engaged in resurfacing the track. The tie tamping machine is a large piece of track equipment used for the purpose of tamping ballast under the ties after the track maintenance forces have raised and leveled the track. Some of the tie tamping machines are insulated in such a manner that they do not shunt or short out the track circuit. Others are not insulated and place a shunt on the track circuit, which in turn affects the proper operation of the signal system. The machines that are not insulated do not place a positive shunt on the track, as a train would do, due to the fact that they are not heavy enough, and, accordingly, the shunt has an intermittent effect on the signal system. To overcome the possibility of an ineffective shunt, and to afford signal protection for the machine, the Carrier has provided the track forces in charge of this machine with a mechanical shunt to place behind the machine while it is working and thereby give the machine the same signal protection as if it were a train.

It is our understanding that the tie tamping machine used in this instance was insulated and, accordingly, did not have any effect whatever on the track circuit. Irrespective of whether or not the tie tamping machine was insulated, the mechanical shunt was furnished in this case and used by the track forces on the dates cited above, and was placed behind the machine while it was being

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

OPINION OF BOARD: This dispute concerns the shunting of a track circuit by Maintenance of Way employes in April 1957. On the days in question these men were using a Matisso Tamping Machine to tamp ballast on track in automatic signal territory. Flag protection for the machine was provided by a Maintenance of Way employe. Moreover, since the tamping machine was not insulated, it normally caused the signals to show restrictive or stop indication, as though a train were in the block. However, because the wheels of the machine raised up from the rail from time to time (thus causing an intermittent change of signals), Maintenance of Way employes placed a temporary shunt wire between the rails. This was done by fastening the wire to the base of each rail with a set screw attached to the shunt, thereby preventing intermittent signal changes.

The Organization claims this is work which belongs to Signalmen under Rule 1 — Scope. It also cites Awards 3688, 11507 and 11508 in support of its position.

The Scope Rule of this Agreement encompasses all employes engaged in construction, installation, repair, inspecting, testing and maintenance of interlocking systems and devices, signals and signaling systems, as well as many other listed devices or equipment. Application of a temporary shunt is not mentioned, although in its final clause Rule 1 brings within Signalmen's province "any other work generally recognized as signal work". The key question here, in our judgment, is whether this phrase encompasses the disputed 1957 work.

It has become well accepted that recourse to tradition, custom and practice is necessary to interpret a "work generally recognized" clause of this kind in order to establish exclusivity. In the case at hand the Organization has produced no evidence to indicate that Signalmen have applied temporary shunts when Tamping machines are being used. As a matter of fact, it has not denied Management's assertions, direct or indirect, that other employes have normally performed this task. For example, in his September 25, 1957 denial, Carrier's Superintendent Communications and Signals wrote in part,

"I cannot see that the Scope Rule of the Agreement is definite enough to remove the routine work of shunting a track circuit from any of the other classes of employes on the railroad."

More explicitly, in its Ex Parte Submission, Carrier noted,

"In order to prevent this intermittent breaking of the track circuit a track shunt is placed across the rails, which practice has been followed ever since this type of machine was first used in 1952."
(Emphasis ours.)

While there are some similarities between the facts in Award 3688 and those in this case — and some dissimilarities between the facts in Award 5428 and those here — a careful reading of these two decisions convinces us that Award 5428 is substantially closer and more relevant:

1. In Award 5428 the Scope Rule also contained the key phrase "work generally recognized as signal work".

2. The Board sought guidance in "tradition, custom and practice" in order to interpret that phrase. It found "no showing that signalmen have ever been used on track machine service"; also, "the work of shunting has long been done by Maintenance of Way employees on this road."

3. The principal burden of protecting the tracks during the time in question (in 5428) fell to a flagman — as it did here.

4. There was no meter testing (in 5428) following application of the shunt — and none here.

5. The shunt was used "simply as an extra safety precaution" in Award 5428. Here, according to the Organization itself, the Carrier took steps "to give added protection" to the operation and the shunt was used as "an extra precaution for the protection of tamping machines." Carrier termed the use of a shunt "insurance in a sense, that what is done normally (shunt track) by the tamping machine will continue to be done, in the event the tamper wheels are raised on occasion during operation of the machine."

Awards 11507 and 11508, recently decided on this property, are distinguishable in terms of the relevant facts. The issue presented in those cases was whether the shunting of a signal system circuit by a supervisory employee engaged in conducting an efficiency test, violated the Signalmen's Agreement. That, clearly, is not the issue in the case at hand.

Under all the circumstances this claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 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 12th day of July 1963.