

Award No. 12627
Docket No. SG-12002

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 1, Scope, when, on January 14, 1959, it assigned or otherwise permitted a person or persons who are not covered by the Signalmen's Agreement to perform generally recognized signal work in manipulating signals 202 and 201 by use of shunts and derails.

(b) The Carrier now compensate Signal Maintainer J. T. Bass and Signal Helper C. Webster for a minimum call of two hours and forty minutes each at their respective overtime rates of pay because of this violation. [Carrier's File G-304-2; G-304.]

EMPLOYEES' STATEMENT OF FACTS: The claimants in this dispute, Messrs. J. T. Bass and C. Webster, are the assigned Signal Maintainer and Signal Helper, respectively, on the Falmouth, Kentucky, signal maintenance territory. On January 14, 1959, Mr. Bass was informed that signals 201 and 202, which are on his territory, were stopping trains. Upon investigation, Mr. Bass discovered that persons who hold no seniority or other rights under the Signalmen's Agreement were required and/or permitted to use a shunt wire to cause signal 202 to display "stop", and to remove a derail to cause signal 201 to display a similar indication.

Under date of January 17, 1959, Mr. J. T. Bass, Local Chairman, presented the following claim to Mr. Frank Hacker, Signal Supervisor:

"On January 14, 1959 signal 202 was caused to display the stop and proceed indication by a standard shunt wire placed across the rails just ahead of the signal. At the same time signal 201 was caused to display the stop and proceed indication by removing the derail ahead of the signal thereby shunting the track.

ment 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.'

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. * * *

As previously stated by carrier, it has been the practice for many years on this railroad for officials to make efficiency tests which include the use of a shunt wire placed across the rails or by throwing a derail in making automatic block or interlocking signal tests, which has never been recognized as signal work.

Carrier submits it is apparent from the foregoing that the Traveling Engineer and Assistant Trainmaster applying a temporary shunt wire on the track and throwing a derail for the purpose of making an efficiency test, does not constitute carrier assigning or otherwise directing generally recognized signal work to persons not covered by the signalmen's agreement, in violation of the agreement, as contended by the employees.

It is also apparent that the shunting of a circuit by use of a temporary shunt wire or by throwing a derail 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, contractually or otherwise, and that same should be declined.

OPINION OF BOARD: On January 14, 1959, a Traveling Engineer and an Assistant Trainmaster, neither of whom are covered in the Signalmen's Agreement, were making efficiency tests in the vicinity of Morning View, Kentucky. They caused signal 202 to display a stop by a standard shunt wire placed across the rails ahead of the signal and they caused signal 201 to display a stop by removing the derail ahead of the signal thus shunting the track.

The identical issue, between the same parties, and involving the same Agreement was considered by this Division in Awards 11507 and 11508. We sustained the claims. In Award 11507 we said:

"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."

Award 11595, a comparable dispute on the same property, is not applicable. In that claim the track circuit was shunted by Maintenance of Way employees who were using a Matisso Tamping Machine to tamp ballast on track in area where automatic signals were located. The wheels of the machine caused intermittent change of signals. To avoid this the Maintenance of Way employees placed a temporary shunt wire between the rails. We distinguished the facts involved in Award 11595 from those in Awards 11507 and 11508 and we said:

"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 employe engaged in conducting an efficiency test, violated the Signalmen's Agreement. That, clearly, is not the issue in the case at hand."

Award 5428 is also not applicable for the same reason. In that case Maintenance of Way employees placed a temporary shunt on a track circuit while they removed a cribbing machine.

The Traveling Engineer and the Assistant Trainmaster are supervisory employees. They were engaged in making efficiency test. They were not engaged in track work which necessitated temporary shunting of a signal system circuit. In shunting the signal circuit for efficiency test purpose, they violated Rule 1 — Scope.

Awards 11507 and 11508 are not palpably wrong.

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 11th day of June 1964.

**CARRIER MEMBERS' DISSENT TO AWARD No. 12627
DOCKET SG-12002**

Referee David Dolnick

Our dissent to Awards 11507 and 11508 is equally applicable here and, by reference, is made a part of this dissent.

Two wrongs do not make a right. We are fully aware of the principle that, **unless palpably wrong**, this Board is never warranted in overruling, in a subsequent dispute between the same parties, a previous award construing the identical provisions of their contract. The decision in Awards 11507-8 is clearly wrong, and the Board in this Award 12627 should have so found rather than perpetuate pernicious error.

The error of the majority's finding that carrier violated Scope Rule 1 is plainly demonstrated by their conclusion that denial Award 11595, involving a comparable dispute between the same parties, is not applicable. It should be obvious that, if the use of a temporary shunt cable between the rails does not violate Scope Rule 1 of the Signalmen's Agreement when applied by M. of W. track employes in the performance of their M. of W. work, then it does not violate the rule when Trainmasters use the same standard shunt cable in performing their work of conducting efficiency tests. It is the duty and responsibility of division officers to test the efficiency of train and engine service employes in observing carrier's operating rules, and in doing so they are not testing or inspecting signals.

The fact is that Scope Rule 1 does not include the application of temporary shunt cables between rails as signal work. We have already seen that application for the sole purpose of conducting efficiency tests has nothing to do with the construction, installation, repair, inspecting, testing or maintenance of signals — nor can it be said to be generally recognized as signal work. Thus, the burden was on petitioner to show that such work is reserved exclusively to signal employes through historical practice, custom and tradition on the L&N system. The evidence clearly indicated that no such practice of exclusive performance exists.

For these reasons, we dissent.

**R. A. DeRossett
R. E. Black
W. F. Euker
G. L. Naylor
W. M. Roberts**