

Award No. 13181
Docket No. SG-12518

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly the Scope Rule and Rule 70.

(b) Mr. J. E. Whitlock and Mr. M. J. Butterly be paid eight (8) hours at their straight-time rate of pay, which was the time required by employees not covered by the Signalmen's Agreement to weld a stainless steel bead on the top of the rails of the Port District crossover, just east of Mile Post No. 88 in Washington, California, on December 29, 1959. (Carrier's File: SIG 152-70)

EMPLOYEES' STATEMENT OF FACTS: The Port District crossover in Washington, California, is used so seldom that the top of the rail becomes heavily rusted, which dangerously reduces the shunting sensitivity of the track circuit. On December 29, 1959, the Carrier assigned and/or permitted two employees who hold no seniority or other rights under the Signalmen's Agreement to weld a stainless steel bead on the top of the rails in this crossover. This work was performed to assure that when a train uses this crossover there will be a positive shunt of the track relay to actuate the signals. Under date of January 11, 1960, Mr. L. H. Carmichael, Local Chairman, presented the following claim to Mr. A. C. Murphy, Signal Supervisor:

"I wish to present the following claim on behalf of Mr. J. E. Whitlock, Jr., senior Signalman, and Mr. M. J. Butterly, senior Assistant Signalman, in Signal Gang No. 8.

'A' That the Southern Pacific Co. violated the current Signalmen's Agreement, particularly the Scope Rule and Rule No. 70.

In view of the foregoing, there is no basis for a sustaining award and the claim must be denied."

Since the Scope Rule does not confer upon claimants an exclusive right to the work involved, there was no violation of the current agreement and claimants are entitled to no payment under Rule 70.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose by reason of Carrier's assigning the job of welding a stainless steel bead on the top of rails of the Port District Crossover on December 29, 1959, to Maintenance of Way personnel. The Brotherhood of Railroad Signalmen insists that the sole and/or primary purpose for such bead being welded to the track is to improve and assure a positive shunt of the track relay to actuate the signals. The Brotherhood asserts that the work thus belongs to Signalmen and that the assignment to other than Signalmen violates the Agreement. It claims compensation for the Signalmen who, under this contention, should have been assigned.

The Brotherhood relies upon the Scope of their Agreement, which provides:

"This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, detector devices connected with signal system, car retarder systems, centralized traffic control systems, signal shop work and all other work that is generally recognized as signal work."

It is Claimant's position that the track circuit is the integral part of the signal system and that all work on track circuits accrues to Signal Forces. It concedes that track circuits are not specifically enumerated in the above scope, but argue that it is indisputable that the work on a track circuit, being the integral part of the railway system signal, is work covered by the Scope of the Signalmen's Agreement, above quoted. Presumably, the Brotherhood relies upon that part of the above scope which refers to "all other work that is generally recognized as signal work."

The Carrier concedes that the track is a part of the track circuit and that the bead also becomes a part of the track circuit. It denies, however, that the work involved belongs to Signalmen as a part of "all other work that is generally recognized as signal work." It asserts that the laying of the track, cleaning the track of snow, dirt and rust, all of which aids in the operation of the signal system and is necessary to it, is traditionally performed by Maintenance of Way Employees. It also contends that all work of the type involved has been previously performed by other than Signalmen and is, therefore, not within the purview of the above quoted Scope Rule.

The Brotherhood concedes that the work involved has been previously performed by Maintenance of Way Welders. Therefore, we are of the opinion that it is not work "generally recognized as signal work", within the meaning of the above Scope Rule.

The Brotherhood belatedly attempts to argue that the bead constitutes a "detector device connected with the signal system." However, the entire discussion on the property and in the submissions to this Board revolved around the inclusion of this work as a part of the "track circuit." We are of the opinion that it would be improper to completely deviate from the issues argued on the property and submitted to this Board. Therefore, we refrain from ruling as to the merits of this issue.

For the above reasons, the claim should 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 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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1964.