

Award No. 13387
Docket No. SG-13083

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: *Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:*

(a) That the Carrier violated the agreement of July 1, 1950, when on September 5, 1960 (Labor Day), Mr. V. L. Cosey, Supervisor, and Mr. W. M. Whitehurst, Signal Engineer, did cut or have someone other than Signal Department employees cut the switch rods to power switch and did other work in connection with the signals at Barnesville, Georgia, on account of derailment at Barnesville, Georgia. These two supervisory employees did this work between the hours of six A. M. and six P. M.

(b) That J. E. Stewart, Signal Maintainer at Barnesville, Georgia, be paid for twelve hours time at his overtime rate of pay for this violation. [Carrier's File No.: SIG 461]

EMPLOYEES' STATEMENT OF FACTS: On September 5, 1960, a freight train derailed on the Carrier's line near Barnesville, Georgia damaging track and signal facilities. The Carrier called its track forces to cope with the derailment but failed to call the Signal Maintainer assigned to the territory where the derailment occurred. Instead, the Carrier took the chance that the Signal Maintainer would not be needed. When it developed that a Signal Maintainer would be needed, the Carrier violated the Signalmen's Agreement by requiring the track forces to cut a switch front rod loose from a switch point.

The switch front rod is signal work under the scope of the Signalmen's Agreement as it is a part of a power-operated switch. The Signal Forces install and maintain these rods and the Carrier does not deny that they are a part of the signal system, but tries to justify its action in this case on what it called an emergency condition. However, we point out that the Carrier

"AWARD**"Claim denied."****Third Division Award 6379 (Kelliher)**

"The Petitioner has failed to sustain its burden of proof to show a contract violation."

"AWARD**"Claim denied."****Third Division Award 6378 (Kelliher)**

"Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied."

"AWARD**"Claim denied."****Third Division Award 5418 (Parker)**

"* * * Under our decision (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof."

"AWARD**"Claim denied."**

And there are many other Awards of the Board on this point, too numerous to mention.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny this baseless claim in its entirety.

OPINION OF BOARD: On September 5, 1960, a freight train derailment on the Carrier's line near Barnesville, Georgia, caused damage to track including a switch point. The switch in question had been torn loose from the heel block and left lying in the track, but still attached to the switch front rod. The Carrier assigned to welders equipped with oxygen-acetylene cutting torches, the task of cutting away metal protrusion so that the diesel engine could begin rerailling the derailed freight cars. There were no signalmen present at the time.

The Organization filed the instant claim on behalf of S. E. Stewart, Signal Maintainer on the theory that switch front rod work is signal work, for which the Claimant should have been called. It argues that the rod was attached with bolts, that the blockage could readily have been ended by use of a wrench, and that it was improper for welders to perform this task.

The Carrier acknowledges that signal forces have jurisdiction over switch points but notes that in this case the point had been reduced to mangled scrap and that there was no chance for maintenance or repair of that piece of metal. Therefore it points out, the Carrier acted properly in the light of the emergency involved in attempting to resume service rapidly, by having welders remove the protruding metal.

The question in this case is whether or not a signal maintainer located elsewhere should have been called to do the work in dispute. The facts presented show quite clearly that the switch front rod was twisted and extending above rail level; that this constituted an impedence to rerailing cars and resuming normal traffic; and that there was no signal maintainer at hand to work to free the metal.

Even if the rod could have been disconnected by wrench, which is not at all clear considering the manner in which the metal was twisted, it must be concluded that the Carrier acted properly in having the metal cut by a welder in view of the emergency nature of the situation.

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 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 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 26th day of February 1965.