

Award No. 13607

Docket No. SG-13091

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, 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 Rules 5, 15 and 16.

(b) Mr. G. M. Nisle be paid for a call of two (2) hours and forty (40) minutes at the rate of time and one-half for May 10, 1960. [Carrier's File No. SIG 152-72]

EMPLOYEES' STATEMENT OF FACTS: On the date involved in this dispute, May 10, 1960, the Claimant, Mr. G. M. Nisle, was the incumbent of a Signal Maintainer position at Montague, California. On that date, cars in a freight train derailed on the Claimant's signal maintenance territory, after his regular working hours. Track forces were called to the scene of the derailment and they subsequently cut signal bond wires that were part of the track circuit. The Carrier made no attempt to call the Claimant for this work, even though bond wires are an integral part of the track circuit, and the track circuit is an integral part of the signal system.

As Mr. Nisle had not registered absent, he was subject to call for overtime work under Rule 16 of the current Signalmen's Agreement. As no attempt was made to call him for this signal work on his assigned territory, he claimed a minimum call of two hours and forty minutes at the time and one-half rate of pay, as provided for in Rule 15. On June 14, 1960, the Carrier's Superintendent, Mr. S. B. Burton, informed Claimant that his claim was denied.

Under date of July 5, 1960, the Brotherhood's Local Chairman, Mr. R. P. Smick, presented a claim on behalf of Mr. Nisle to the Carrier's Signal Supervisor, Mr. R. G. Hickerson, and that letter has been reproduced, attached hereto, and identified as Brotherhood's Exhibit No. 1. Mr. Hickerson's denial of July 11, 1960, is Brotherhood's Exhibit No. 2. On July 18, 1960, Local Chairman Smick advised Mr. Hickerson of the rejection of his decision, then

trary of what the parties by their past conduct have attributed to it. See Award 1609. The Organization is chargeable with knowledge of the past practice shown of record, and where a contract is negotiated and existing practices not abrogated by its terms, such practices are, in the absence of clearly inconsistent provisions, deemed to have been incorporated in the new instrument and enforceable to the same extent as its other provisions. Awards 5404 and 4086. . . ."

It is clear that the work here in dispute has been performed for decades by track forces on this property as an incident to their regular duties when working on rail where the cutting of bond wire is required to permit movement of the rail. Carrier will not argue that if immediately available, a Signal Department employe could properly be required to perform that function; however, it is Carrier's position that the cutting of bond wires in circumstances here obtaining was a minor duty properly performed by track employes purely as an incident to their handling and clearing of damaged rail-lengths which happened to be joined by the bond wires; the purpose of severing the bonds had nothing whatever to do with the operation of the signal system but was simply necessary to free the rail.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION

Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case, cars of a westbound freight were derailed at the east switch of the Ashland, Oregon Yard on the Shasta Division about 5:10 P. M., May 10, 1960. Track forces were called, and in the process of straightening up two rails that had been turned over, they cut the bond wires. Claimant, the Signal Maintainer, replaced the bond wires during his regular tour of duty.

As a basis for urging that the work involved should have been performed by a Signal Maintainer, the Claimant alleges that the bond wires are an integral part of the track circuit, and that the track circuit is an integral part of the signal system. He further states that he was subject to call for overtime work, and that he should have been called to cut the bond wires. Since the Carrier did not call him, Claimant asks for a minimum call.

The Carrier argues that this type of work is not covered by the Scope Rule of the agreement and further, that the Organization has not shown an exclusive system-wide practice in the absence thereof.

We are persuaded that the prior awards of this Board have determined that work of this nature is "generally recognized as signal work, accruing to Signalmen under the language of their agreement." See Awards 6584, 8069 and 9614.

The Carrier argues further that the activities involved in this case constitute an emergency situation, thereby giving the employer greater latitude in his actions. We would point out that the Signal Maintainer was being held subject to call, just to accommodate such a situation as may be encountered in an emergency. Therefore, it would be necessary for the Carrier to show that an emergency existed which would preclude the Carrier from giving the Maintainer a call to see if he was available to perform the work. We do not believe that any such situation existed in this case.

We are most persuaded by the affidavits introduced by the Carrier to show that other than Signalmen have performed this work in the past. Almost without exception, the statements say that an attempt is first made to locate the Signal Maintainer, and, failing so to do, the other employes go ahead and break the bond wires.

This is the whole point of this case. The Signal Maintainer was being held ready to perform work, and he should have been given a call. This award is intended to apply only to the fact situation described herein.

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 was violated.

AWARD

Claim sustained with compensation to be calculated as provided for in Rule 15 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1965.