

Award No. 13794
Docket No. SG-13891

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Company violated the agreement on September 1, 2, 5, 6, 7, 8 and 9, 1960, by assigning duties of the T&S Inspector described in Article I, Section 1 of the BoFRS Agreement to Office Engineer R. W. Hackenbracht of the T&S Supervisor's Office at Cincinnati, Ohio, and a person unknown, in the Supervisory Class from Philadelphia, Pa. During the layoff due to the T.W.U. strike, Office Engineer R. W. Hackenbracht and the person unknown inspected T&S facilities and equipment from Richmond, Indiana, to Anoka Junction — and from Richmond, Indiana, to Adams, Indiana.

(b) M. E. Newcomer, T&S Inspector, be paid seven (7) days at the T&S Inspector's rate for the above violation.

[System Docket 249 — Buckeye Region Case Z-63]

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the agreement between The Pennsylvania Railroad Company, Baltimore and Eastern Railroad Company and Telegraph and Signal Department Employees represented by this Brotherhood (rules effective June 1, 1943, except as otherwise specified, rates effective September 1, 1949, except as otherwise specified). By reference thereto, that agreement, as amended, is hereby made a part of the record in this dispute. For the sake of brevity, that agreement will be referred to herein as the Signalmen's Agreement; employees classified therein will be referred to as signal employees; work covered thereby will be referred to as signal work, and The Pennsylvania Railroad Company will be referred to as the Carrier.

As a matter of information, Telegraph and Signal (T&S) Department is synonymous with Communications and Signal (C&S) Department.

Carrier's Maintenance of Equipment Department employees represented by the Transport Workers Union (TWU) were on strike from September 1

Therefore, no Rules Agreement violation occurred during the period in question and the instant claim is clearly without merit.

For the foregoing reasons, Carrier submits that there is no valid basis upon which the Employees can establish their claim under the applicable Agreements, and the claim, therefore, should be denied.

III. Under The Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that the Rules Agreement was not violated.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period from 12:01 A. M., September 1, 1960 to September 12, 1960, Carrier ceased operation because of a strike of its Maintenance of Equipment Department employees. During this period Claimant, a non-striking employe, covered by Signalmen's Agreement, was laid off. The claim alleges that during the period of the strike, specifically, from September 1 through 9, officials not covered by Signalmen's Agreement, in violation of said agreement, inspected and tested signals and signal apparatus in the territory to which Claimant had been assigned as Telegraph and Signal Inspector.

The stipulated facts and positions of the parties are:

"JOINT STATEMENT OF AGREED-UPON-FACTS: On September 1, 2, 5, 6, 7, 8 and 9, 1960, during the Shop Craft employees' strike, R. W. Hackenbrach, Office Engineer in the C&S Supervisor's office, Cincinnati, Ohio, and L. A. Paroonigan, Circuit Designer, out of the C&S System Offices in Philadelphia, inspected all railroad-owned facilities on the railroad from Richmond, Indiana, to Anoka Junction, Indiana and from Richmond to Adams, Indiana, along with a member of the Track Department, including signals, signal equipment, tracks, buildings, and all other facilities. A statement made by Mr. Hackenbrach as to the duties performed is attached as Exhibit A.

Pursuant to written notice, Claimant M. E. Newcomer, T&S Inspector, was notified that his position was abolished effective September 1, 1960. Immediately prior to September 1, 1960, he was the incumbent of a position whose territory was the same territory involved in this case.

POSITION OF EMPLOYEES: The employees contend that there has been a violation of the Scope of the Agreement and of the Classifications contained in the Agreement when on the dates set forth the Carrier used other than the employees governed and covered by the Agreement to perform certain service and work coming within the Scope of the Agreement and accruing to the named Claimants.

The claimant in this case was not on strike, and was available to perform the work done by the persons other than those contained in the Agreement. If, as the Carrier has been contending, the railroad was closed down for the period mentioned, September 1, 1960 to September 12, 1960, it would not have been necessary to have anyone to perform the services and the work done by these persons not covered by the Agreement.

The employees further contend that if there was to be a certain number of tests, inspections and work to be done on the signal equipment during the strike of the TWU forces, then it should have arranged to use those employees covered by the Agreement to do this work, and not use persons outside of the Classifications set forth in the Agreement.

The employees feel that there was short-sightedness by Management in providing the proper employees covered by the Agreement to do the work in question and, therefore, feel that this claim should be sustained.

POSITION OF COMPANY: During the period from 12:01 A. M., September 1, 1960 to September 12, 1960, the operation of the Pennsylvania Railroad Company ceased due to a strike of its Maintenance of Equipment Department employees.

It is the employees' contention that the duties performed by R. W. Hackenbracht, Office Engineer, C&S, during this period, and listed herein as Exhibit A of the joint statement of agreed-upon-facts, violated Article I, Section 1, of the BRS Agreement.

Article I, Section 1, of the BRS Agreement defines a C&S Inspector in the following terms:

'Inspector: An employe whose primary duties consist of inspecting the facilities, equipment or apparatus installed, maintained or repaired by leading maintainers . . .'

In neither this Article nor in the Scope provision of the Schedule Agreement does it stipulate that such inspection work is the exclusive domain of C&S Inspectors. Mr. Hackenbracht and Mr. Pa-roonigan were instructed to patrol the temporarily inactive right-of-way between Richmond and Anoka, Indiana and between Richmond and Adams, Indiana, inspecting all PRR facilities. This inspec-

tion was not of the detailed type necessary to maintain proper standards for the operation of trains, but, rather, was of a cursory type designed to uncover only evidence of vandalism, theft or damage to the PRR installations in this area.

Further, as supervisory personnel, Messrs. Hackenbracht and Paroonigan have the inherent responsibility to perform an inspection function.

NRAB Third Division Award 4828 reads, in part, as follows:

'It will be conceded at the outset that all inspecting of signal apparatus in the field is not reserved by the Agreement. All Supervisory officers are charged with varying amounts of inspection work, which is inherent in their positions.'

Messrs. Hackenbracht and Paroonigan were simply fulfilling their inherent duties and obligations as Supervisors. NRAB Third Division Award 6221 supporting.

Claim is without merit, and has been properly denied.

EXHIBIT A

Statement of R. W. Hackenbracht, Office Engineer,
C&S, made at Cincinnati, Ohio, May 26, 1961
at 11:15 A.M.

* * * * *

On the day before the strike, I was instructed to go to Richmond and as the strike was to take effect the next morning, I was to report to the District Engineer by telephone from the signal office at Richmond.

I was instructed to ride the rail highway jeep from Richmond to Anoka, inspecting signal facilities, instrument cases, T&T lines, towers, highway crossing protection, wayside signals, switches, to see that they were in operating condition and report any irregularities that would restrict the movement of trains to the District Engineer.

I was to do this on alternate days with the exception of one day I rode the rail highway truck on the Ft. Wayne Branch from Decatur to Richmond doing primarily the same work.

On two occasions I made ground reading (12-A test) at Delco and reported the results of the test to Inspector M. E. Newcomer on the day after the strike. I used a volt meter to make these tests.

At the conclusion of the strike I reported irregularities in writing to M. E. Newcomer.

/s/ R. W. Hackenbracht"

In "Position of Company" Carrier states:

"This inspection was not of the detailed type necessary to maintain proper standards for the operation of trains, but, rather, was

of a cursory type designed to uncover only evidence of vandalism, theft, or damage to the PRR installations in this area."

If this was in fact the extent of the inspection, it would not be a violation of the Agreement. But, the best evidence of the work performed is found in the Statement of the Office Engineer, Exhibit A, supra, wherein he says he was instructed "to see that they [signal facilities, etc.] were in operating condition and report any irregularities that would restrict the movement of trains. . . ." (Emphasis ours.)

A reading of the Scope Rule and Article 1, Classifications, Section 1, persuades that the inspection performed by the Office Engineer was the "primary" duty of Claimant and the Office Engineer was enjoined from performing "any of the duties of employees of the classifications set forth in Article 1 of this Agreement."

The arguments advanced by Carrier are:

- (1) The officials of the Carrier always make "inspections" as an incident of their functions;
- (2) The incidental inspections of officials are evidence that "inspection" is not the exclusive work of employees covered by Signalmen's Agreement; and
- (3) When the operations of Carrier are terminated by reason of a strike, Carrier is free to exercise protection of its interest as its judgment dictates.

Carrier cites our Award Nos. 1498, 6221 and 8049 in support of its position. No one of said Awards is colored by a situation where because of a strike by one craft or class the operations of a Carrier, as a whole, are terminated; and, the positions of other crafts and classes of non-striking employees abolished during the term of the strike.

We need look only to Award No. 8049, in which we said: "supervisory personnel have some right and duty to inspect the work of subordinates..." With this statement, those knowledgeable in the field of labor relations and labor law do not disagree. But, the right to such "inspection" is exercised in the capacity of overseer, and does not detract from or usurp the "primary" work of inspectors.

We find that the inspecting work performed by the Office Engineer was the "primary" duty of Claimant; and, the performance of the work by the Office Engineer violated the Agreement. We will sustain the Claim.

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 30th day of July 1965.

**CARRIER MEMBERS' DISSENT TO AWARD 13794,
DOCKET SG-13891 (Referee Dorsey)**

The Majority holds a violation of the Agreement existed because the work performed by the Office Engineer was "the 'primary' duty" of the Claimant's craft. We thoroughly disagree.

Unfortunately, the Majority looked at only a portion of the facts submitted for their consideration. For example, they admit that if the inspection was "of a cursory type designed to uncover only evidence of vandalism, theft or damage to the PRR installations in this area" then "it would not be a violation of the Agreement." However, they then concentrated upon the statement submitted by the Office Engineer, instead of reading that statement in context with the "Joint Statement of Agreed Upon Facts" which conceded that the Office Engineer, the Circuit Designer and a member of the Track Department all rode a rail highway jeep and "inspected all railroad-owned facilities on the railroad from Richmond, Indiana to Anoka Junction, etc., . . . including signals, signal equipment, tracks, buildings and all other facilities."

Clearly, this was not the type of inspection which Signal Inspectors are entitled to make under their contract. It was nothing more than a casual inspection of all railroad-owned facilities, and the type of inspection we normally expect railroad officials to make at all times. Award 12087. We fail to grasp the significance of the Majority's holding that inspections by railroad officials are "in the capacity of overseer." In a strike situation, you have no one to oversee. Yet, it has already been admitted such inspections are proper in strikes when they are cursory in nature.

The Majority might have read more extensively from Award 8049, and then possibly could have reached the same conclusion that

" * * * these legal obligations are important in convincing us that the Carrier would never severely restrict its own right to know, its own right to be assured, and its own right to inspect, at least not to the extent contended for by the Organization in this case." For the reasons set forth above, among others, we dissent.

**W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts**