

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, 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:

(a) That the Carrier violated the Signalmen's Agreement following the wreck of train No. 72 at or near Catoma, Alabama, on July 3, 1959, when it used the System Gang to repair damages to the signal system instead of using the members of the MNO&P Division Gang.

(b) That the members of MNO&P Division Gang be compensated for an equal amount of time as that worked by the System Gang in restoring the signal apparatus to normal condition following the wreck outlined in Paragraph (a). [Carrier's File No.: G-304-14; G-304.]

EMPLOYEES' STATEMENT OF FACTS: A derailment occurred on the Carrier's line near Catoma, Alabama at approximately 10:30 A. M., Friday, July 3, 1959. Shortly after the derailment the Maintainer notified Signal Supervisor L. B. Hale in Mobile, Alabama, that the wreck had occurred and that a southward and dwarf signal had been demolished. The Carrier claims it then tried to contact the Division Signal Gang whose camp cars were located at Aladocks, Alabama (Mobile) but were informed that the members of that gang had left for their homes to spend the weekend. The members of the Division Signal Gang contend they were available at the time of the accident. The System Gang was used at the scene of the derailment on July 4, 5, 6, 7 and 8, 1959.

Nevertheless, Mr. Hale and two subordinates proceeded to the scene of the derailment (approximately 180 miles north) to survey the damage. They did not make any effort to contact the members of the Division Gang at their homes on July 3 or 4, 1959, and instead, at approximately 2:45 P. M. on Saturday, July 4, 1959, called the System Signal Gang to the accident scene to restore the signal system.

While this dispute was being progressed on the property, the Carrier took the position that Rule 51 in the Signalmen's Agreement permits it to use

The General Chairman, as evidenced by his letters of October 3, 1959 to the division superintendent, January 7, 1960 to the superintendent of communications and signals, and his letter of March 10, 1960 to the director of personnel, supra, attempted to qualify the provisions of Rule 51(a) by taking the position that an emergency does not exist until all the available division forces are being used and there still remains need for the assistance of system forces.

There is nothing in the provisions of Rule 51(a) which supports the general chairman's contention. Such an interpretation obviously would not be practical in emergencies which required expeditious handling in order to avoid or minimize delays to passenger trains and important freight trains.

Carrier submits neither the provisions of Rule 51(a), nor any other rule, were violated in the instant case. There is, therefore, no contractual basis for the employees' claim for which reason same should be denied.

OPINION OF BOARD: In the instant claim the Organization charges the Carrier violated the current agreement when it deemed an emergency existed for a period of over 24 hours by reason of the derailment of thirty-three cars of a freight train at Catoma, Alabama, on July 3, 1959.

The record shows the derailment occurred at 10:16 A. M., Friday, July 3, 1959, completely blocking the northbound main line and partially blocking the southbound main line. The record also shows that shortly after the derailment it was determined that certain signals, including underground cables, bond wires, parkway outlets, spring switch and insulated joints were destroyed, and the record further shows that at the time of the derailment the camp cars of the Division Signal Gang were located at Aladocks, Alabama, about 172 miles south of the scene of the derailment; that an attempt was made to reach the Division Signal Gang at Aladocks and that the members of the Gang had dispersed to their several homes for weekend visits.

The question here to be decided is — Was the Carrier guilty of such laches as to constitute a waiver of its right to use the System Gang as provided in Rule 51 (a) of the current agreement, which reads as follows:

"System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades fires, and slides."

The Carrier's main line was blocked in both directions by a derailment. An effort was made to reach the Division Gang at Aladocks. The members of the Gang were dispersed and it was reasonable to presume, under the circumstances, that further delay in clearing the main lines would be met in assembling the Division Gang and transporting them to Catoma. The System Gang was located in the vicinity of the derailment and was called to assist the Signal Maintainer and his helper in installing temporary cable and temporary signals.

In the circumstances found we must conclude the Carrier's officers acted prudently, and reasonably; and in accordance with the provisions of the Rules; that an emergency existed while the main lines were blocked; and for the reasons shown we must deny 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 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 20th day of October 1965.

DISSENT TO AWARD 13906, DOCKET SG-13430

This Award is but a further manifestation of the almost magical effect that the mere mention of the word "emergency" has on some neutrals.

The Award does not reflect mature thought on the part of the majority; therefore, I dissent.

G. Orndorff
Labor Member