

Award No. 13938

Docket No. SG-14220

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) The Carrier violated the Scope, Classification and other provisions of the Signalmen's Agreement, particularly Rule No. 17, when it failed to call Signal Maintainer C. D. Bradshaw for signal trouble at Cherokee Yards on April 4, 1962.

(b) Mr. C. D. Bradshaw be allowed 2.7 hours' pay at the overtime rate. [Carrier's File: D-3759]

EMPLOYES' STATEMENT OF FACTS: On April 4, 1962, Claimant C. D. Bradshaw was assigned as a maintainer to the Carrier's Cherokee Yards, Tulsa, Oklahoma. His regularly assigned hours were from 6:30 A. M. to 2:30 P. M. Upon reporting for duty, Claimant Bradshaw was advised by the retarder operator that a switch had failed during the night and that he had removed some rocks that had been lodged between the switch point and stock rail at about 5:30 A. M. and the switch had functioned properly since that time.

The above facts are not in dispute. It is the contention of the Brotherhood that employees covered by the Signalmen's Agreement have an exclusive right to correct trouble on the Carrier's signal system and that the Carrier violated the Agreement when it permitted the operator to correct the trouble that caused the switch to fail. As a result of this violation, Claimant Bradshaw presented a claim in his behalf to the Carrier in which he asked that he be paid a minimum call, 2.7 hours, at the punitive rate. The initial claim, which was presented on Carrier's Form MW-126 Standard, is attached as Brotherhood's Exhibit No. 1.

Other correspondence pertinent to this claim is attached hereto as Brotherhood's Exhibit Nos. 2 through 7. The claim was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer designated by the Carrier to handle such disputes, without receiving a satisfactory settlement.

which were interfering with the operation of the switch. When the obstruction was removed the switch operated normally. There was no Signal Maintainer on duty and none was required to remove the rocks in question. The Carrier views the Organization's position that a Signal Maintainer has the exclusive right to remove rocks from between switch points and stock rails in this factual situation as untenable. The Agreement Rules as they apply to the particular factual situation involved do not warrant the sustaining award and this Division is requested to so find. See Award 10703 (Hall).

OPINION OF BOARD: On April 4, 1962, Claimant, C. D. Bradshaw, was regularly assigned as a Signal Maintainer at Cherokee Yard, Tulsa, Oklahoma, with assigned hours from 6:30 A. M. to 2:30 P. M.

The facts which gave rise to the dispute are set forth in a letter from Carrier's Signal Engineer to the Organization's General Chairman as follows:

"On the morning of April 4th when Mr. Bradshaw reported for work at about 6:30 A. M., the Retarder Operator advised Mr. Bradshaw that one of the switches in the Classification Yard had been failing and that he inspected this switch and removed some rocks from between the points and stock rail and that the switch had been operating satisfactorily since that time." (Emphasis ours.)

Claim was filed for "time account of Retarder Operator inspecting and sweeping SW 41 5:30 A. M., account of it failing." (Emphasis ours.) Carrier denied the Claim for the given reason:

"The sweeping of switches and removing obstructions is not work specifically assigned to Signal Maintainers, in fact, such work is generally performed by track forces."

Carrier's reason for denial is not responsive to the Claim's averment and the Organization's contentions:

"We have never contended that the work of removing rocks from switch points is the exclusive work of Signalmen. We recognize that such work may at times be performed by Trackmen, and circumstances surrounding each particular incident would necessarily determine to whom the work would accrue. But we emphatically state that under no circumstance would the work be that of a Car Retarder Operator. Since the obstruction caused a switch failure in the instant dispute, it is clear that it was work which should have been assigned to the Signal Maintainer and would not have been Trackmen's work. The reason for this being that the primary purpose for inspecting and sweeping the switch was to correct a switch failure, and correcting switch failures is Signalmen's work.

The Brotherhood has conclusively shown at page 7 of its submission that there is an established principle recognized by this Board to the effect that—the primary reason for performing certain work determines to which class of employees such work belongs.

In the instant case, as soon as the operator became aware that the switch was failing and that someone would have to correct the failure, it was established that signal work existed, and the Signal Maintainer should have been called. When the Car Retarder Operator went out to inspect the switch and ultimately swept it to clear the

trouble, he was performing signal work. The primary reason and in fact the only reason that he did this work was to clear the failure and make the switch operate properly — so, in line with the principle just referred to, it is impossible to deny that this was work which accrues exclusively to Signalmen."

Therefore, the many Awards cited by Carrier in support of its reason for denial are inapposite.

The Scope Rule of the Agreement vested signalmen with exclusive right to the work of maintaining and repairing the switch. From this it follows that upon discovery that the switch was malfunctioning, a signalman should have been called to inspect it and remedy the cause. The Retarder Operator crossed craft lines when he undertook to inspect the switch. His action in this regard was violative of the Signalmen's Agreement *ab initio*. Consequently, his further action in removing some rocks is immaterial.

It is uncontroverted that Claimant was available for call at the time the switch was "failing" (Rule 19). He should have been called. Therefore, he is entitled to be made whole for what he would have earned absent the violation. The amount of damages is prescribed in Rule 17 (b):

"(b) Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at the time and one-half rate. . . ."

We find that Carrier violated the Agreement and will Award Claimant damages for "two hours and forty minutes at the time and one-half rate."

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 with monetary damages as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.