

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

(a) The Carrier violated the Signalmen's Agreement, as amended, when Inspector U. D. Payne, an employe not covered by the Signalmen's Agreement, closed the disconnect switches on high voltage signal lines at Fort Pierce, Florida, Signal Section No. 8, on March 6, 1962.

(b) Signal Maintainer R. M. Hixson and Signal Helper Cecil Anderson be compensated for two (2) hours and forty (40) minutes at their respective overtime rates of pay account Inspector Payne performing this signal work.

EMPLOYEES' STATEMENT OF FACTS: On March 6, 1962, there were an unusual number of wood fires on the Railway, which resulted in damage to the 4400 volt transmission line in various locations. Inspector U. D. Payne, an Inspector, who is an employe not covered by the Signalmen's Agreement, was informed by the Wire Chief at 1:20 P.M., on that date, that the power was off between Fort Pierce and Melbourne, Florida.

One of the Claimants, Mr. Hixson (erroneously misspelled in our notice of February 13), who is the regularly assigned Maintainer on this section, was on the telephone and advised the Wire Chief and Inspector Payne that he had patrolled the line between Fort Pierce and Vero Beach, which was 14 miles of the total of 48 miles of line on which the power was off. Mr. Payne decided that the power should be restored on that part of the line which had already been patrolled. In order to do this he instructed Maintainer Hixson to open the switches at Vero Beach. The Inspector, in turn, closed the switches located at Fort Pierce, after Maintainer Hixson informed him that the switches at Vero Beach were open.

The Carrier first states that this action was taken by Inspector Payne as a consequence of an emergency during the regular work period of

3. The Railway, of course, is solely responsible for the safe conditions on its road and in discharging its responsibility has the right to make such tests as to be assured and to know that conditions and equipment on its property are safe, or, as stated by the Third Division in Award 8049:

"While it may be true that ordinary inspecting and testing necessary to proper installation, maintenance and repair of Carrier's signal systems is work belonging to employes under the Signalmen's Agreement, it is just as true that all inspecting of signal apparatus in the field is not reserved by the agreement. Award 4828."

Inspector Payne employed a prescribed test check-out procedure in an effort to determine the location of the power line failure. His was a function attaching to any signal supervisory representative of the Railway, and was certainly not one exclusively accorded under the Scope Rule, or any other rule of the Signalmen's Agreement, to any other class of employes in the Communications-Signal Department. Manifestly, therefore, he performed a service incidental to his position which did not amount to a violation of the Signalmen's Agreement, as alleged by the Employes, or, as stated by the Third Division in resolving a comparable dispute in Award 6221 involving the work of a Signal Supervisor:

"The Board from the evidence must conclude that the Supervisor in this case made only that inspection which was required and inherent in his position as a Supervisor. . . .

In Award 4946 this Board stated: 'The yardmaster had the right * * * to examine for the purpose of determining if claimant should be called to make repairs.'"

For the reasons stated, the claim is without merit and should be denied.

OPINION OF BOARD: On March 6, 1962, an unusual number of forest fires on Carrier's right of way caused the 4400 volt transmission line of the signal system to be inoperative, per this record, from Fort Pierce to Melbourne, Florida.

The Claimants, a Maintainer and a Maintainer's Helper, were directed to patrol the line northward. After reaching Vero Beach, 14 miles north of Fort Pierce, Claimants reported seeing no breaks in the line. The Inspector at Fort Pierce, in a telephone conversation with the Maintainer and Wire Chief, directed the former to open the disconnect switch at Vero Beach—thereafter, the Inspector closed the disconnect switch at Fort Pierce. This latter action showed the line to be operative to Vero Beach—it also caused power to flow from the substation south of Fort Pierce along the line to the disconnect point, lighting the signals that far north, but leaving the remaining distance to Melbourne dark.

Petitioner's allegation and claim is that the Inspector's act of closing the disconnect switch was the work of Claimants. It seeks compensation, at overtime rates, for them for the work in question. The record contains evidence that Claimants worked approximately four hours overtime on the day involved.

Carrier's answer to the claim submitted was to cite a letter of understanding, dated March 23, 1948—quoted below—which had been agreed to by the parties, and which, Carrier asserts, permits Inspectors to conduct tests

and inspections. Additionally, it asserts that the instant act of the Inspector was a test of the signal system as was contemplated and covered in the letter of understanding, i.e.:

"It was further understood that the words 'Inspection' and 'testing' in the Scope Rule of the Revised Signalmen's Agreement effective April 1, 1948, do not apply to the inspections and tests made by inspectors and other officials, to see that the employes are properly performing their work and to see that the apparatus is functioning properly."

We are of the opinion that while the act of closing a disconnect switch should normally be the work of either signalmen or maintainers, or both, the facts presented herein disclose that such act could also be performed by the Inspector in this instance. We find no violation of the agreement, and will, therefore, deny the claim, with an admonition to Carrier to quote correctly from our opinions in the future.

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 29th day of October 1965.