



Award No. 14210

Docket No. SG-14544

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.:

On behalf of Signal Maintainers P. G. West, Mt. Carmel, Illinois, for a minimum call (two hours and forty minutes at the overtime rate of pay) account track forces removing signal bond wires before replacing a broken rail at M.P. 139.2 on September 26, 1962.

[Carrier's File: SG-18297.]

EMPLOYES' STATEMENT OF FACTS: This claim is a result of the Carrier's action of calling track forces to change out a rail without calling the signal maintainer to perform the signal work of removing the signal bond wires from the ends of the rail before it was removed. As this occurred on Claimant West's assigned signal maintenance territory, and he was holding himself available for call under the "Subject to Call" rule of the Signalmen's Agreement (Rule 36), he initiated the claim by submitting a "Time and Overtime Ticket," Form 1227, dated September 26, 1962, claiming a call (two hours and forty minutes at the overtime rate), giving this explanation:

"No. 61 reported broken rail M.P. 139.2. Track Dept. was called at 8:00 P.M. to change out rail but no maintainer called. Reported to me the following morning."

In a letter dated October 8, 1962 (Brotherhood's Exhibit No. 1), the Signal and Electrical Superintendent, Mr. L. C. Brown, notified Claimant West that his claim was denied.

This matter was referred to the General Chairman, and he handled the claim in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. The General Chairman and the Director of Labor Relations discussed the case in conference on March 1, 1963.

On March 1, 1963, at the request of the General Chairman, the claim was discussed in conference between Carrier's Director of Labor Relations and the Brotherhood's General Chairman. Carrier's Director of Labor Relations again pointed out to the Brotherhood's General Chairman that there was no evidence that any work was performed which involved a signal maintainer; also that no work was performed on September 26 at milepost 139.2 as alleged. However, Carrier's Director of Labor Relations informed the Brotherhood's General Chairman that in view of his allegations, a further investigation would be made. Such investigation was made, following which on April 29, 1963, Carrier's Director of Labor Relations wrote the Brotherhood's General Chairman as follows:

"Further reference is made to the claim on behalf of Mr. P. G. West, signal maintainer, Mt. Carmel, Illinois, for pay for 2 hours, 40 minutes on September 26, 1962, on the grounds that he should have been called in connection with the replacement of a broken rail.

My further investigation reveals that no broken rail was removed from the track at Milepost 139.2 on September 26, 1962, as alleged."

Thus the evidence is crystal clear that track forces did not replace a broken rail at milepost 139.2-W on September 26, 1962, as alleged by the Brotherhood's General Chairman, nor were any bond wires removed from any rail at that point on that day, nor were bond wires removed by track forces who replaced a broken rail in the track at milepost 139.9-W at the west end of Simpson passing track on September 25, 1962.

OPINION OF BOARD: At about 8:00 P. M. on Tuesday, September 25, 1962, track forces were called and used to replace a broken rail in the track at Milepost 139.9-W on Carrier's St. Louis-Louisville Division, within the assigned territory of Claimant Signal Maintainer, Mt. Carmel, Illinois. In performance of this work, the signal bond wires connected at the joints of the two adjacent rails in the track were broken. Claimant was not called, and no effort was made to call him either at the time the broken rail was reported or when the track forces arrived and found that the broken rail had to be replaced. On the following morning, Claimant was notified of the incident and he replaced the signal bond wires during his regular tour of duty. Claimant, on the same date, submitted a time ticket claiming a minimum call payment account not being called, with the following explanation:

"No. 61 reported broken rail M. P. 139.2. Track Department was called at 8:00 P. M. but no Maintainer called. Reported to me the following morning."

This dispute in all essential aspects involves questions and agreement provisions identical in principle with cases covered by prior Third Division Awards 13607, 11515, 9614, 8072, 8069 and 6584. In recent Award 13607 (Hamilton), the Board said:

"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."

Following our ruling in the above awards, we find that the agreement was violated and will sustain the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.

CARRIER'S MEMBERS' DISSENT TO AWARD 14210, DOCKET SG-14544 (Referee Perelson)

In this award the Majority concludes that a signal maintainer must be called out to break bond wires before section forces can change out rail on the theory the breaking of bond wires is signal work under the generally recognized clause. Aside from the fact the award erroneously fosters a make-work proposition, the award is otherwise in error.

The Scope Rule, being of the specific variety, does not by specific reference therein cover the work for which claim was made and for such work to be classified as signal work through the generally recognized clause, the burden was on the Organization to prove that, throughout this carrier's property, the work has customarily and traditionally been exclusively performed by signal employees. (Award 11526 — Dolnick.) Such a burden the organization failed to sustain and it was error for the Majority to seize on awards involving other parties, agreements and practices in order to find that the agreement between the present parties was violated.

For these reasons, we dissent.

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