

Award No. 14291
Docket No. SG-12119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW ORLEANS UNION PASSENGER TERMINAL

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New Orleans Union Passenger Terminal that:

(a) The Carrier violated the Scope Rule and other provisions of the current Signalmen's Agreement, as amended, when, on May 28, 1959, it required and/or permitted a Maintenance of Way welder and his helper to unlock a power switch machine and discontinue the power supply for the purpose of repairing the switch points.

(b) The Carrier should now be required to compensate the senior furloughed employe, Mr. R. J. Schoendorf, for eight (8) hours at the pro rata Signal Maintainer rate of pay.

EMPLOYES' STATEMENT OF FACTS: On May 28, 1959, the Carrier required and/or permitted a Maintenance of Way Welder and his Helper to unlock a power switch machine and discontinue the power supply to the machine so that the switch points would not be moved electrically while the Welder was performing routine welding work on the switch points, such welding being of a routine nature because of normal wear of the switch points.

Up to this time it had been the custom for a Signal Maintainer to unlock the switch machine and discontinue the power supply. The Signal Maintainer would then work in the immediate area so that he could restore the power and/or the switch to its normal position without a delay to trains, and make any necessary adjustments in the switch machine.

Under date of June 1, 1959, Mr. M. T. Byrd, Local Chairman, presented the following claim to Mr. T. J. Kremer, Supervisor of Signals:

"On May 28, 1959, work that comes within the Scope of the Agreement between the New Orleans Union Passenger Terminal and

Since the Carrier was in direct violation of the Scope Rule and other provisions of the Current Signalmen's Agreement in assigning employees not classified to perform work concerning the adjustment and manipulation of power switch machine, we can not accept your decision.

As conference was held in your office December 14, 1959 concerning this matter and no satisfactory settlement could be agreed on, we are appealing claim to Mr. Jesse Clark, president for further consideration, any correspondence concerning this claim will be handled with Mr. Clark in the future."

The correspondence quoted above shows the manner in which this dispute was handled on the property. The General Chairman took exception to the fact that the claim was never denied by the Signal Supervisor, and he discussed the manner of handling and the merits of the claim with the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 16, 1954, which is by reference thereto made a part of the record in this dispute.

CARRIER'S STATEMENT OF FACTS: On May 28, 1959 a welder and his helper were required to build up switch points on a machine thrown switch. The welder got a crank and key from the Towerman and placed the crank in the machine to keep the Towerman from throwing the switch, having notified the Towerman he was going to build up the switch points. The only work performed by the welder was building up the switch points, he did not in any way perform work on the switch machine.

The Organization filed claim for eight (8) hours pro rata rate for furloughed Signal Maintainer, R. J. Schoendorf, contending he suffered the loss of eight (8) hours pay because the Signalmen's Agreement was violated when the welder discontinued the power to the switch when he built up the switch points.

Claim was declined, and subsequent appeal was declined, and on August 19, 1960 the Carrier received notice from the Organization that it intended to file ex parte submission with the Third Division.

OPINION OF BOARD: The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-operating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 9):

"**FINDINGS:** (Art. V) Paragraph 1(a) of Article V of the August 21, 1954 Agreement provides that —

'(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or

grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. * * *'

"The Local Chairman presented the above claim on June 1, 1959 to Supervisor of Signals T. J. Kremer. Mr. Kremer's association with the Terminal was terminated July 1, 1959, and the Signal Department was placed under the jurisdiction of the Supervisor of Maintenance of Way and Structures. On July 21 such Supervisor denied the claim in a letter to the Local Chairman.

"On July 23 the Local Chairman wrote the Supervisor of Maintenance of Way and Structures that his decision was invalid inasmuch as there was a local agreement requirement that all claims arising in the Signal Department be handled with the Supervisor of Signals.

"In further handling the General Chairman contended that the claim was payable under Article V of the August 21, 1954 Agreement.

"The National Disputes Committee rules that under the circumstances of this case the decision by the Supervisor of Maintenance of Way and Structures fulfills the requirement of Paragraph 1(a) of Article V of the August 21, 1954 Agreement.

"DECISION: The claim is not payable on the basis of non-compliance with Article V of the August 21, 1954 Agreement.

"Inasmuch as Docket SG-12119 presents an issue under Article IV of the August 21, 1954 Agreement, which is within the jurisdiction of the National Disputes Committee on the merits, the Committee will retain the docket."

On May 28, 1959, Carrier required and/or permitted a Maintenance of Way Welder and his helper to unlock a power switch machine and discontinue the power supply to that switch machine so as to do welding on a switch point. The key to open the locked switch machine and the crank used to turn off the power were both secured from a nearby Tower.

The Brotherhood maintains that turning off the power in the switch machine is an act the right to perform which belongs to the Brotherhood under the Scope clause of the current Signalmen's Agreement, which sets out, in part:

"This agreement between the New Orleans Union Passenger Terminal and its Signal Department employes represented by the Brotherhood of Railroad Signalmen of America governs the rates of pay, hours of service and working conditions of all employes engaged in the construction, installation, reconstruction, repair, reconditioning, dismantling, inspection, testing and maintenance, either in shops or in the field, of the following:

"(a) Signals and signaling systems; traffic control systems; interlocking plants and interlocking systems how-

It appears to this Board that for work to be "generally recognized" as work of a particular craft that recognition must be acknowledged by words or acts or a pattern of past performance of more wide-spread or long standing nature than is evidenced here, that such recognition must be more than ex parte.

This work is thus found not to be within the Scope of the Agreement.

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 has not been violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.

ever controlled; train stop and train control equipment and devices; car retarders and car retarder systems; highway crossing protective devices; track occupancy indicators; electric switch targets together with lights, wires and cables; train order signals; spring switch mechanisms.

* * * * *

"(e) All appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work. (Emphasis supplied)

"(f) The following classifications include all employees performing the work described under the heading of 'Scope.' No employees, other than those coming within the scope of this agreement will be required or permitted to perform any of the above work."

Lacking a more specific application of the Scope clause, the issue here boils down to whether or not the act of the Welder in turning off the power by means here employed was "work generally recognized as signal work".

The Brotherhood cites Award 11507 which states:

"... all work on signal line circuits is generally recognized as being encompassed within the contractual phrase

'any other work generally recognized as signal work.' "

and points out that a power-operated switch is an appurtenance of a signal system.

Brotherhood further cites Award 8069 which states:

"... breaking of the track bonds, which had the effect of opening the circuit and affecting the whole signal system within the CTC was an appurtenance to and an integral part of the signal system and that under these circumstances it is embraced within the broad language of the contract."

It is the opinion of this Board that the "work" performed by members of the Brotherhood in all cited cases held to be within the Scope clause of the Agreement can be characterized as activities under the Scope clause, i.e. installation, repair, inspection, maintenance, etc. Discontinuing the power supply to the switch machine under the facts set out in this matter does not appear capable of such characterization or grouping.

Was this work then recognized as signal work on the basis of past practice? It appears that this depends on one's point of view. The Brotherhood states that up to this time it had been custom for a Signal Maintainer to unlock the switch machine and discontinue the power supply. The Carrier responds that this was only a convenience if a Signal Maintainer happened to be available and if not it was always done by a welder. They further point out that similar acts of power termination to enable manual switching have consistently been performed without contest by Towermen.