

Award No. 15718
Docket No. SG-15385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company:

(a) Carrier violated the Virginian Signalmen's Agreement, as amended, particularly Rules 101(b) and 314(f), when it permitted Assistant Trainmaster A. L. Goff, Jr., to perform signalman's work on February 16, 1964, after the engineer on passenger train No. 25 reported Signal No. 3405 red (near Glen Lyn, Virginia).

(b) Carrier should compensate Signal Maintainer B. V. Clyburn (Narrows, Virginia) for 2.7 hours at the overtime rate of pay.
[Carrier's File: S-318]

EMPLOYES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. B. V. Clyburn, is the signal maintainer with headquarters at Narrows, Virginia. Mr. A. E. Boens is the signal maintainer on an adjoining territory. While both hold seniority rights on the Radford Division, Clyburn is covered by the Viarginian Signalmen's Agreement, and Boens by the Norfolk & Western Signalmen's Agreement.

This claim arose as a result of the manner in which Carrier required and/or permitted signal work to be performed on Mr. Boens' territory by Assistant Trainmaster A. L. Goff, Jr., and Roadmaster W. D. Kirby, officials who hold no seniority or other rights under either of the two Signalmen's Agreements.

A separate claim was initiated on behalf of Mr. Boens for the work performed by Mr. Kirby; it was settled on the property. As shown by our Statement of Claim, the instant claim is on behalf of Mr. Clyburn for the work performed by Mr. Goff.

On Sunday, February 16, 1964, at approximately 12:30 P. M., the engineer on passenger train No. 25 reported that signal No. 3405 (on Boens' territory) was red. The crew on the train discovered that one or more rocks had come through a slide detector fence and onto the track.

Under the provisions of this implementing agreement of April 19, 1960, the employes of each Carrier, by use of their integrated seniority, gained access to positions on the other property, including positions of Signal Maintainers. This accounts for the situation in the instant case in which adjoining signal maintenance territories were assigned to signal maintainers working under different agreements.

As of February 16, 1964, adjoining signal maintenance territories on this Carrier's Radford Division were assigned to signal maintainers A. E. Boens, a Norfolk and Western employe, and to B. V. Clyburn, a former Virginian employe. Boens was assigned to territory extending from mile post 325.0 to 344.5, with headquarters at Narrows, Virginia. Clyburn was assigned to territory extending from mile post 344.5 to 360.05, with headquarters at Oakvale, West Virginia.

On Sunday, February 16, 1964, which was a rest day for both Boens and Clyburn, a rock dislodged from and rolled down an embankment and struck and smashed through a slide detector fence located near Glen Lyn, Virginia. Glen Lyn and the slide detector fence in question are both located within the territory to which signal maintainer A. E. Boens was assigned.

When the rock struck the slide detector fence, a circuit control device (circuit breaker) was activated in a manner that disrupted electrical current circuit to a signal located just west of Glen Lyn. This caused the signal referred to, to display a "stop" indication. The conditions outlined above were not discovered until passenger train No. 25 approached and stopped for the signal just west of Glen Lyn.

In order to minimize delay to the passenger train, Assistant Trainmaster A. L. Goff, Jr., and Roadmaster W. D. Kirby, both of whom were on duty, drove from Narrows to Glen Lyn, a distance of about six miles, removed the rock from the track and reset the circuit controller. Resetting the circuit controller required only the simple manipulation of a switch that works up and down similar to a tumbler type light switch commonly used in residences. Upon removing the rock from the track and resetting the circuit controller, Messrs. Goff and Kirby departed from the scene and no repairs were made by either of them to the slide detector fence.

A time claim based upon this occurrence was filed in favor of signal maintainer A. E. Boens. This claim was eventually appealed by General Chairman V. J. Sartini to the highest officer of the Carrier designated to handle such disputes as shown by Carrier's Attachment "A" hereto. Offer of settlement was submitted to General Chairman Sartini as shown in Carrier's Attachment "B." Mr. Sartini's acceptance of the offer is evidenced by Carrier's Attachment "C."

A time claim based upon this same occurrence was also filed by General Chairman E. E. Cooper in favor of Claimant herein, signal maintainer B. V. Clyburn. Please see Carrier's Attachment "D." This claim was eventually appealed to the highest officer of the Carrier designated to handle such matters as shown in Carrier's Attachment "E." This claim was declined to General Chairman E. E. Cooper by letter dated July 24, 1964, copy of which is herewith attached as Carrier's Attachment "F."

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation of the Agreement on the contention that an Assistant Trainmaster performed signalman's work on February 16, 1964, after the engineer on passenger train No. 25 reported Signal No. 3405 red, near Glen Lyn, Virginia.

As of the date of the occurrence giving rise to the claim, adjoining signal maintenance territories on the Carrier's Radford Division were assigned to signal maintainers A. E. Boens and to B. V. Clyburn, Claimant. Boens was assigned to territory extending from mile post 325.0 to 344.5, with headquarters at Narrows, Virginia. Claimant Clyburn was assigned to territory extending from mile post 344.5 to 360.5, with headquarters at Oakvale, West Virginia.

On Sunday, February 16, 1964, which was an assigned rest day for maintainers Boens and Clyburn, a rock became dislodged from an embankment and struck and damaged a slide detector fence located near Glen Lyn, Virginia, on the territory to which signal maintainer Boens was assigned. When the rock struck and damaged the detector fence, a circuit control device (circuit breaker) was activated in a manner that caused Signal No. 3405, located just west of Glen Lyn, to display a stop indication. The conditions outlined were not discovered until passenger train No. 25 approached and stopped for the signal.

An Assistant Trainmaster and Roadmaster drove from Narrows, Virginia, to Glen Lyn, a distance of about six miles, removed the rock from the track, and reset the circuit controller. The Carrier denies that the Assistant Trainmaster and Roadmaster made any repairs to the slide detector fence.

A claim was initiated and processed on the property in behalf of signal maintainer Boens, on whose territory the slide detector fence and the signal involved were located, for a call on the ground that the Carrier permitted the Roadmaster to perform signal work instead of calling maintainer Boens. That claim was settled on the property.

The claim before the Board in behalf of maintainer Clyburn is processed on the theory that as two officials, the Assistant Trainmaster and Roadmaster, were used in the performance of the disputed work, then two signal employees were aggrieved. There is, however, no probative evidence showing that the services of two signal maintainers were required to perform signal work, and, in the absence of such proof, the claim in behalf of signal maintainer Clyburn will be denied.

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 30th day of June 1967.

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