



Award No. 15813
Docket No. SG-15635

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rules (a), (1), and (m), when, on March 24, 1964, at about 7:45 A. M., while conducting efficiency tests, Trainmaster B. B. Brenton set Signal 3424 at "Stop" position by shunting the track within the block limits of the signal, which caused Rock Island Train No. 60 to be delayed six minutes at Jennings, Kansas.

(b) The Carrier be required to compensate Signal Maintainer A. West, whose headquarters are Norton, Kansas, and whose assignment includes Signal 3424, for two (2) hours and forty (40) minutes at his punitive rate. This call to be in addition to what he has already been paid for services performed on that date.

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the performance of signal work by a Carrier official. The Claimant, Mr. A. West, is the regularly assigned Signal Maintainer at Norton, Kansas, the territory on which the disputed work was done.

On March 24, 1964, at about 7:45 A. M., while making efficiency tests, Trainmaster B. B. Britton set Signal 3424 at "Stop" position. His action caused Rock Island Train No. 60, Engine 133, to be delayed 6 minutes at Jennings, Kansas.

Inasmuch as that signal could be caused to display a "Stop" indication only by shunting the track within the blocking limits of the signal or opening the controlling signal circuits in some manner and such procedures are within the items of work which are exclusively reserved to Signal Department employees by the Agreement, particularly the Scope, Rules (a), (1) and (m), a claim on behalf of the employee who should have been used, Signal Maintainer A. West, was instituted by Local Chairman H. S. Carson.

There is an agreement in effect between the parties to this dispute, bearing an effective date of July 1, 1952, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is a copy of an agreement in effect between the parties bearing an effective date of July 1, 1952, on file with your Board which by this reference is made a part of this submission.

2. At about 7:17 A. M. on March 24, 1964, Carrier's Assistant Superintendent at Goodland, Kansas, B. B. Brenton, while conducting an efficiency test on the train crew of Train No. 60, caused Signal 3424 to display a stop and proceed (red) indication and Signal 3442 to display an approach (yellow) indication by placing a shunt wire across the rails within the blocking limits of Signal 3424, causing the signal to operate as though a train were located within its blocking limits.

3. The Employees' file claim in behalf of Signal Maintainer A. West, Norton, Kansas, whose assignment included Signal 3424 at Jennings, Kansas, for a call of two hours and forty minutes at punitive rate of pay in addition to what Maintainer West had been already paid on that date account an alleged violation of the Scope Rule of the Signalmen's Agreement, particularly paragraphs a, 1 and m of that rule. (See Carrier's Exhibit A.)

4. The handling on the property of the Employees' claim is shown by Carrier's Exhibits:

- B Carrier's April 17, 1964 letter
- C Employees' June 2, 1964 letter
- D Carrier's June 15, 1964 letter
- E Employees' July 27, 1964 letter
- F Carrier's August 31, 1964 letter
- G Employees' September 22, 1964 letter

5. Subsequent conferences on October 6 and November 30, 1964, failed to resolve this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: One of the Carrier's officials, while conducting an efficiency test on the train crew of Train No. 60, caused Signal 3424 to display a stop and proceed indication by placing a shunt wire across the rails within the blocking limits of Signal 3424, thereby causing the signal to operate as though a train were located within its blocking limits.

The Organization contends that the act of placing the shunt wire across the rails was work belonging to the Claimant and consequently the Carrier

therefore stood in violation of the Scope Rule, specifically paragraphs (a), (1) and (m) thereof. The pertinent parts of the Scope Rule of the Signalmen's Agreement provide:

"This agreement covers the rates of pay, hours of service, and working conditions of all Signal Department employees classified herein engaged in the construction, repair, installation, inspection, testing or maintenance, including such work performed in the railroad's Signal Department Shops, of the following:

(a) . . . wayside equipment used in connection with . . . color light . . . signals and signaling systems; . . .

* * * * *

(1) Appurtenances of the above items.

(m) All other work generally recognized as signal work."

The Brotherhood, in furtherance of its position, avers that the placing of a temporary shunt is work generally recognized as Signalmen's. The Carrier categorically denies this averment, and affirmatively states, that this dispute involved an efficiency test of a train crew, and not an efficiency test of the signal system itself. It further contends that this testing of train crews was never work generally recognized as signal work on this particular property.

The precise issue in this case, the placing of a shunt wire across the rails, for the purpose of conducting an efficiency test of a train crew, would come within that portion of the Scope Rule commonly referred to as "the generally recognized" clause, if in fact it comes within the purview of the Agreement at all. This particular clause, being all-inclusive, vague and ambiguous, necessitates that we attempt to ascertain the specific intent of the parties, which can only be determined by examining the past practice, custom and usage on the property. The evidence of record as to the essential point, that is, the placing of the shunt wire for the aforementioned reason, is conflicting. In order for this Board to render a sustaining award in this case, the Petitioner of necessity would have had to present a preponderant body of evidence to demonstrate that the Carrier's official did work that was "generally recognized as signal work." We find such probative evidence to be lacking and will accordingly deny the Claim.

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 20th day of September 1967.

DISSENT TO AWARD NO. 15813, DOCKET NO. SG-15635

Award No. 15813 is in error.

The Majority, Carrier Members and Referee, had before them for their guidance Awards Nos. 3688, 11507, and others. These awards clearly answer the question which the majority contends was not answered. The petitioner in Docket SG-15635 met its burden of proof; the majority ignored it.

Award No. 15813 being in error should be ignored, and I dissent.

W. W. Altus
For Labor Members
10/3/67