

Award No. 18557
Docket No. SG-18670

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope and classification rules, when on June 27, 1968, Carrier required and/or permitted a Trainmaster to inspect and clear an obstruction from switch #5 in retarder yards.

(b) Carrier should now be required to compensate Signal Maintainer C. D. Bradshaw for 2.7 hours at his overtime rate of pay. (Carrier's File: D-4891.)

EMPLOYEES' STATEMENT OF FACTS: On June 27, 1968, Swing Trick Signal Maintainer George W. Lewis, was called because of switch failure in the retarder system in Cherokee Yard, Tulsa, Okla. Upon arrival at the Retarder yard system, Mr. Lewis was requested to make repairs to switch No. 17, on the main line first. He thereupon made repairs to switch No. 17, which had failed because of an obstruction in the switch points, and after completing this assignment made similar repairs to retarder system switch Nos. 13 and 21. However while he was making repairs to Switch No. 17, Trainmaster Pollard inspected and cleaned obstruction from Switch No. 15, after which the switch operated properly.

The inspection of retarder system switch No. 15 and its repair was signal work and Trainmaster Pollard is not covered by the Signalmen's Agreement, therefore a claim was filed on behalf of C. D. Bradshaw who was the first trick signal maintainer at Cherokee Yards.

The claim was based on a violation of the Scope and Rule 19 of the Signalmen's Agreement and these Rules have been copied below for ready reference.

"SCOPE

This agreement governs the rates of pay, hours of service and working conditions of all employees in the Signal Department (except supervisory forces above the rank of foremen, clerical forces and

Sometime prior to 1:15 A. M., Thursday, June 27, 1968, in the movement through the terminal of a hopper car load of chat from which the chat was leaking from around the hopper door, power switches Nos. 7, 13, 15 and 21 were fouled and would not operate properly. Signal Maintainer G. W. Lewis was called for duty on or about 1:15 A. M. to inspect and correct the fouled condition of the switches. Upon his arrival at the yard, Signal Maintainer Lewis was sent first to clear up switch No. 7, which is a switch leading off the main line at 17th Street.

Switches 13, 15 and 21 are power switches in the classification yard, which yard consists of 4 groups of 10 classification tracks each. After clearing switch No. 7, Mr. Lewis then proceeded to classification track switches 13, 21 and 15 in that order. At switches 13 and 21 he removed the chat fouling the switches which cleared the switches for operation. Upon his arrival at switch 15 he checked the switch and found it operating properly. Mr. Lewis completed the service for which he was called and went off duty at 3:30 A. M. While he was only on duty 2 hours and 15 minutes in the performance of this service, he received 2 hours 40 minutes pay at the punitive rate in line with the provisions of Rule 17 (b) of the Basic Agreement between the parties.

While Signal Maintainer Lewis was inspecting and removing the chat from switch No. 7, Trainmaster Pollard removed a small piece of chat from switch No. 15 following which this power switch functioned normally. For this reason, when Signal Maintainer Lewis inspected switch No. 15, he found the switch operating properly.

OPINION OF BOARD: On June 27, 1968, power switches Nos. 7, 13, 15 and 21 were fouled because of loose chat which had leaked from a hopper car. Signal Maintainer Lewis was called to inspect and correct these particular switches. While the Signal Maintainer was inspecting and removing chat from Switch No. 7, Trainmaster Pollard, an employee not covered by the Signalmen's Agreement, removed a small piece of chat from Switch No. 15, thereby causing Switch No. 15 to operate normally. Under authority of Award 13938 (Dorsey) involving these same parties, such act performed by the Trainmaster in removing the chat from Switch No. 15 constitutes a violation of the Agreement.

Carrier next contends that since the named Claimant was on vacation and not available, no monetary award should be made even if the claim be sustained as to the violation. This question of monetary payment to an unavailable Claimant has also been passed on by this Board in favor of the Organization. See Awards 10575 (LaBelle) and 6949 (Carter). These Awards hold that one of a group entitled to perform the work may prosecute a claim even if there be others having a preference to it. The essence of the claim by the Organization is for Rule violation and the penalty Claim is merely incidental to it. The fact that another employee may have a better right to make the Claim is of no concern to Carrier and does not relieve Carrier of the violation and penalty arising therefrom.

This Claim will be sustained in its entirety.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1971.