



Award No. 18913
Docket No. SG-19239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
DELAWARE AND HUDSON RAILWAY COMPANY

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

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when a Signal Maintainer, Mr. Gordon S. Bartholomew, was denied the opportunity of working the time equivalent to the time spent by Section Foreman Vaspasciano between 11:00 P. M. and 2:00 A. M., or a total of three hours, on August 9, 1969.

(b) Carrier should now compensate Signal Maintainer Gordon S. Bartholomew, Fort Edward, New York, for three hours at his overtime rate account failure of the Carrier to properly assign the work.

(Carrier's File: Case No. 5.69 Signalmen)

EMPLOYEES' STATEMENT OF FACTS: August 9, 1969, Signal Maintainer R. Bronson was notified by the dispatcher on duty that the occupancy track light indicator showed a train occupying the track between "KG" and "HM" interlocking plants, but no train was present in that section.

While making an inspection to locate and repair the signal system, the track indicator light turned off, even though Signal Maintainer Bronson had not yet located and repaired the trouble.

This fact was reported to the dispatcher, who — instead of calling the adjoining Signal Maintainer Gordon S. Bartholomew with headquarters at Fort Edward, N. Y., to assist in the location and correction of the trouble — called the Section Foreman located at Fort Edward, N. Y., who inspected the bond wires between "KG" and "HM" interlockers while Signal Maintainer Bronson drove the company truck alongside the tracks. During the inspection a broken bond wire was found and replaced, whereupon the trouble was cleared.

The work performed by the Section Foreman; i.e., assisting a Signal Maintainer and inspecting bond wires, is work covered by the Scope Rule of the Signalmen's Agreement which has historically and traditionally been performed by Signalmen.

On August 14, 1969, claim was instituted by Signal Maintainer Bartholomew who was assigned to the Signal section south of the section assigned to Maintainer Bronson, alleging that the Extra Gang Foreman had assisted Mr. Bronson in placing the Signal Maintainer's hi-rail vehicle on the rails and had also performed signal work in patrolling the track. As a consequence of such alleged violation of the Scope Rule, the Organization progressed claim on behalf of Mr. Bartholomew, which was denied at all stages of appeal on the property.

OPINION OF BOARD: The Organization contends that Carrier violated the Scope Rule of the Agreement when a Section Foreman was called and used to assist in the inspection and repair of the signal system in the place of Claimant, the adjoining Signal Maintainer.

A malfunction of the signal system occurred on August 9, 1969 when an occupancy light indication showed lighted with no train present between "KG" and "HM" interlocking plants. Thereafter the trouble cleared up. Signal Maintainer Bronson was called out by Carrier to locate the trouble. Carrier also called out a Section Foreman, as Carrier contends, to patrol the track and look for a possible track failure in the track structure between the aforesaid two points.

The Organization asserted in the General Chairman's letter of December 5, 1969 to Carrier's Superintendent Signals and Communication that the Section Foreman assisted the Signal Maintainer in placing a hi-rail signal truck on the track to make further inspections, and both made inspection of the track to determine whether there was a broken rail, broken hand wire, or whatever the trouble might be and thereby correct the malfunction. The General Chairman went on to state in said letter that a bond wire was found to be the cause of the failure and was repaired. Carrier's Chief Engineer, in an inter-office Memorandum, dated May 14, 1970, to Carrier's Director of Labor Relations and Personnel Planning denied that a hi-rail truck was used on the rail on the date in question. The use of said hi-rail truck was also denied by Carrier's Director of Labor Relations in his letter to Chairman Snyder dated May 26, 1970.

The Organization bases its claim for the alleged violation of the Agreement on the assertion that an employee not covered by the Agreement was permitted by Carrier to make an inspection of bonds and signal failures, which is work performed by Signalmen.

Carrier's position is that no craft lines were crossed; that Maintainer Bronson did not perform track work and Foreman Vaspasciano did not perform any work which is exclusively signal work; that both the Maintainer and the Foreman worked together for a short period of time, each within his own area of responsibility, in an effort to locate and correct a difficulty which could have been found in either the signal system or track structure.

We find that the claim is without merit in this instance. The Organization failed to adduce any probative evidence showing that the Section Foreman performed signal inspection work. We find that said Section Foreman was called out to determine whether or not there had been a track failure which would have caused the trouble. When the inspection was initially being made by both the Section Foreman and the Signal Maintainer, it was not known

what was causing the trouble. The Section Foreman was looking for track trouble, clearly within the purview of his duties. The fact that a defective bond wire was later found to be the cause of the trouble does not prove that the Section Foreman was inspecting for a bond wire defect.

The record discloses that the Section Foreman did not assist in the repairs to the bond wire, and the Organization is not claiming that said Section Foreman assisted in the repairs made by the Signal Maintainer.

Therefore, finding that Carrier did not violate the Agreement when it permitted a Section Foreman to inspect the track for track failure on the date in question, we must 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.

DISSENT TO AWARD 18913, DOCKET SG-19239

The majority has erred in its conclusions in Award No. 18913.

The question was whether or not the Section Foreman performed signal inspection work. The majority holds that no probative evidence was adduced to show that he was, yet it acknowledges that he was called out " * * * to determine whether or not there had been a track failure which would have caused the trouble." It is important to bear in mind that the only known "trouble" prior to inspection being made was a restrictive (stop) signal indication; hence, if the Section Foreman was called to determine the cause of trouble, it was the signal indication that he was called to investigate. There was, therefore, probative evidence adduced in support of the employees' position.

Award No. 18913 is in error, and I dissent.

W. W. Altus, Jr.
Labor Member

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