

 Award No. 18952
Docket No. SG-18961

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

(a) The Union Pacific Railroad Company violated the current Agreement effective April 1, 1962, between the Brotherhood of Railroad Signalmen and the Union Pacific Railroad Company, when it failed and/or declined to apply the Scope Rule, by assigning the work of investigating and correcting malfunctions of the Signal System to employees who are not covered by the Classification Rules of our Agreement on January 1, 12, 25, 29 and 30, 1969.

(b) Mr. B. H. Synon be allowed four (4) hours on January 1, 1969, between the hours of 1:00 P. M. and 5:00 P. M., seven (7) hours on January 12, 1969, between the hours of 4:10 P. M. and 11:10 P. M., six (6) hours on January 25, 1969, between the hours of 12:01 P. M. and 6:01 P. M., two (2) hours on January 29, 1969, between the hours of 4:00 P. M. and 6:00 P. M., and one (1) hour on January 30, 1969, between the hours of 4:00 P. M. and 5:00 P. M., or a total of twenty (20) hours at the rate of time and one-half his assigned hourly rate.

(Carrier's File: A-10425)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the present parties bearing an effective date of April 1, 1962, which is by reference made a part of the record in this dispute. Particularly pertinent here are Rules:

"Rule 1. Scope. This agreement governs the rates of pay, hours of service and working conditions of employees in the Signal Department who construct, install, maintain and/or repair the following:

(a) Electric, electro-pneumatic, pneumatic, mechanical, or electro-mechanical interlocking systems; semaphore, color-light, position light or color-position-light block signal systems, car retarder systems, centralized traffic control systems; automatic highway crossing protective systems;

Claim was subsequently appealed to Division Engineer McDonald by Local Chairman Parsons under date of July 8, 1969 to Division Engineer McDonald and was declined by letter dated August 20, 1969. Copy attached as Carrier's Exhibit D.

Division Engineer McDonald's decision was rejected by Local Chairman Parsons with his letter of August 30, 1969. Copy attached as Carrier's Exhibit E.

The claim was subsequently appealed by General Chairman Wollbrinck to Chief Engineer Brown by letter dated October 13, 1969. Copy attached as Carrier's Exhibit F.

Chief Engineer Brown declined the claim to General Chairman Wollbrinck by letter dated October 23, 1969, copy attached as Carrier's Exhibit G.

Conference was held between General Chairman Parsons and Chief Engineer Brown on the subject matter on January 20, 1970 and Chief Engineer Brown reiterated his declination of the claim and confirmed conference by letter dated January 26, 1970. Copy attached as Carrier's Exhibit H.

During the discussions of the dispute the Carrier fully outlined its position that its investigation had conclusively developed that the only work actually performed consisted entirely of removal of snow and ice from switches, which has, historically, been considered as work of an emergency nature and traditionally has been supported by well established practice on the property and had never been considered as exclusive to any one craft or classification of employees.

During these discussions the Organization was unable to submit any evidence that any work was performed which might relate to the construction, installation and maintenance and repair of the Signal system, but seemed content to rest their case solely on the basis that it should properly be classified as coming within the scope of their agreement simply on the basis of the stop indication of Signal 817.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 1, 1969, Carrier's train designated Extra 821 West was stopped at Crates, Oregon, because of receiving a red stop indication from Signal No. 817. Carrier called a Foreman of one of its Track Maintenance Gangs, who with a track laborer, proceeded to the site of Signal 817 and removed the cause of the stop indication by cleaning snow and ice from the spring switch on said signal. Similar violations are alleged by the Organization as occurring on January 12, 29 and 30, 1969. The Organization takes the position that the work performed is the exclusive work of the Signalmen's Organization under the Scope Rule of the current Agreement. Carrier denies exclusivity of this work by Signalmen and alleges that the removal of snow and ice is historically and traditionally work assigned to Maintenance of Way Employees and that the Agreement was not violated in this instance. Carrier maintains that January 1, 1969, was the only date where the question of signal indication was raised by the Organization, and that on other dates specified in the Claim, snow and ice were removed merely because of its presence on the switch.

Carrier maintains that January 1, 1969, was the only date where the question of signal indication was raised by the Organization and that on the other dates specified in the Claim, snow and ice were removed merely because of its presence on the switch.

Similar violations of the Agreement occurred on January 12, 25, 29 and 30. The Claimant made claim on his own behalf (Brotherhood's Exhibits Nos. 2 and 3) on March 10, 1969, covering the January 12 violation, and the Brotherhood's Local Chairman made claim for him on March 21, 1969, covering all these violations. (Brotherhood's Exhibit No. 4)

As indicated by Exhibits Nos. 1 through 12, attached, this claim was handled on the property in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes, without settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: During the period involved in this dispute the claimant B. H. Synon was employed and regularly assigned as a Signal Maintainer at The Dalles, Oregon, which is located on the Carrier's Northwest District, Oregon Division, Seniority District No. 7.

The claimant, both prior to and during the period of the alleged violations, was fully employed in the classification of Signal Maintainer and was being utilized to perform routine maintenance and repair work on his assigned district under the immediate supervision of the Carrier's Assistant Signal Supervisor. During the month of January 1969, because of prevailing snow and ice storm conditions over the Oregon Division, it was necessary to utilize forces an appreciable extent to clear snow from the property, including the removal of snow from switches.

These conditions were particularly prevalent on the claim dates of January 1, 12, 25, 29 and 30, on which dates employees were not only utilized during their regular assigned hours but, likewise, on an overtime basis when conditions warranted. As an example, on January 1, 1969, which the Organization accentuates in their claim, the Carrier's train Extra 821 was stopped at Crates, Oregon, due to receiving a red (stop) indication from Signal 817.

In view of the Carrier's Officer's knowledge of prevailing heavy snow conditions at this location and advice from the train crew that the switches were heavily plugged with snow, Maintenance of Way forces (Section) were called to clean switches to remove any snow and ice obstructions. In the judgment of the Carrier at this time there was every evidence that the stop (red) indication was due solely to snow and ice obstruction and did not indicate any failure in the Signal System. The Carrier's judgment proved proper as after the Maintenance of Way forces had cleared snow and ice from the switches at Crates which permitted the closure of the switch points to the stock rail, the stop indication of Signal 817 immediately changed to a proceed indication for train operation.

The fact that Maintenance of Way forces were utilized to clean snow and ice from switches is the apparent basis for the instant dispute and which resulted in the claim being initially filed by Local Chairman Parsons with Signal Supervisor Webb under date of March 21, 1969. Copy attached as Carrier's Exhibit A.

Signal Supervisor Webb declined the claim Local Chairman Parsons with his letter dated May 19, 1969. Copy attached as Carrier's Exhibit B.

Signal Supervisor Webb's declination was rejected by Local Chairman Parson with his letter of July 8, 1969. Copy attached as Carrier's Exhibit C.

The Claim in this dispute is without merit. Absent a malfunction in the switch, members of the Signalmen's Organization do not have the exclusive right to remove snow and ice from signal switches. Where no malfunction exists, the work of manual snow removal is not reserved to any craft. See Awards 14913 (Kabaker), 17327 (Devine), 10422 (Dolnick), 13336 (Dorsey).

The Organization has cited Award 18372 (Dorsey) and 18557 (by this Referee) as authority for their contention in this dispute. However, these two awards are not in point. In those Awards (18372 and 18557), Carrier required an inspection of a signal in order to determine the cause of the trouble. In this instance, no inspection was required and the only act complained of was the simple removal of snow and ice from the switch. Had there been an inspection in order to determine the cause of trouble, the result in this case might have been different. If, after removing the snow and ice, a malfunction had appeared in the signal, then Claimant would have had a justifiable Claim had he not been called to make the necessary inspection and repair. This Claim 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.

Dissent to Award 18952, Docket SG-18961

Award 18952 is in error.

This award is in conflict with Award 18557 (by this same Referee). His attempt to distinguish only shows his lack of knowledge and understanding of the facts.

Because of the error, I dissent.

W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member

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