

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly the Scope Rule and Rules 5 and 70.

(b) Mr. M. J. Dickerson, Signalman, be paid two (2) hours for each of the following days — April 12, 15, 16, 17, 18 and 19, 1963 — account Maintenance of Way forces cutting off bond wires without a Signalman being present when the track was broken. (Carrier's File: SIG 152-134)

EMPLOYES' STATEMENT OF FACTS: On the dates involved herein, Claimant Dickerson, a Signalman in Megger Gang No. 2, Tehachapi, California, was assigned to perform signal work in connection with a rail renewal program. This included the work of cutting off bond wires, drilling holes in and installing new bond wires on the newly-laid rail, renewing insulation in the insulated rail joints at signal and battery-cut locations, removing track connections from the old rail (at the ends of the track circuits) and connecting them to the newly-laid rail.

As indicated by our Statement of Claim, this dispute is progressed on the basis other than signal forces cut off some of the bond wires without a signal employe being present.

The claim was initiated on May 27, 1963 by the Local Chairman, subsequently handled in the usual and proper manner on the property, without receiving a satisfactory settlement. The pertinent correspondence that constitutes the handling of this dispute on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 6.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1, 1947 (reprinted April 1, 1958 including revisions), 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 in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employees represented by the Petitioner, having effective date of April 1, 1947 (reprinted April 1, 1958, including revisions), a copy of which is on file with the Board and is hereby made a part of this submission.

2. On the dates of this claim, April 12, 15, 16, 17, 18 and 19, 1963, Maintenance of Way track forces were renewing rail on curves in Soledad Canyon on the San Joaquin Division.

On each date of the claim the track forces worked their regular hours, 7:30 A. M. to 4:00 P. M., with the exception of April 12 and 17, when they worked one hour overtime. At all times during the rail-renewing work, a signalman was assigned to work and did work with the track forces during their entire tour of duty. The signalman so assigned was M. J. Dickerson, the claimant in this case. When track gang finished renewing rails on one curve, and while signalman continued his work to completion, they moved a short distance down the track to the next curve and started changing out the worn rails of said curve. Track forces removed bolts and angle bars from two joints, one at each end of the string of rails (approximately 15 rails) to be replaced, removed necessary spikes, and moved the string of rails to one side, thereafter installing replacement rails. When signalman finished at the former curve, he moved to new location to perform his work, i.e., bonding track, renewing insulation in insulated joints, and any related work having to do with track circuit.

3. By letter dated May 27, 1963 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted a claim to Carrier's Division Superintendent, alleging Maintenance of Way forces cut off bond wires while in the process of renewing rail. Carrier's Division Superintendent denied the claim by letter dated May 31, 1963 (Carrier's Exhibit "B"). By letter dated June 4, 1963 (Carrier's Exhibit "C"), Petitioner's Local Chairman informed Carrier's Superintendent that the claim would be handled further by the General Chairman.

By letter dated June 11, 1963 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, alleging that Maintenance of Way forces cut off bond wires without a signalman present. Carrier's Assistant Manager of Personnel denied the claim by his letter of August 16, 1963 (Carrier's Exhibit "E").

(Exhibits not reproduced.)

OPINION OF BOARD: The issue to be decided, as clearly stated in the claim, is whether Carrier violated the agreement when it allowed Maintenance of Way forces to cut "* * * off bond wires without a Signalman being present when the track was broken."

Rule 5 of the agreement, on which Petitioner relies, provides that a "Signalman - Signal Maintainer" is

"An employe assigned to perform work generally recognized as signal work as outlined in the Scope of this Agreement."

Although the Scope Rule does not specifically mention the cutting of bond wires, Petitioner contends it is work generally recognized as signal work and accrues to Signalman under the language of their agreement. This Board

has held thatt he cutting of bond wires is "generally recognized as signal work." Awards 6584 and 8069 and others have so held. Awards 12087 and 14998 and others involving the same parties, urged by Carrier, have been considered and are found inapposite. In this connection, in the only case cited, Award 13607, involving bond wires and the same parties, the Board held, the Award being limited to the facts of the cases, as follows:

"We are persuaded that the prior Awards of this Board have determined that work of this nature is 'generally recognized as signal work, accruing to Signalmen under the language of their agreement.' See Awards 6584, 8069 and 9614."

Having found that the work involved is generally recognized as signal work will be followed in this case as there is no persuasive reason not to.

Having found that the work involved is general recognized as signal work we also find that it is covered by the Scope Rule. Accordingly, the Carrier's contention that Petitioner must prove exclusivity is inapplicable.

Carrier, while admitting the breaking of the bond wires by Maintenance of Way forces, defends its action by stating (1) that such breaking was merely incidental to the removal of the rails and (2) Claimant was present on the days in question. As to the former, the defense was considered in other cases, among them being 6584 and 8069, and rejected. It will also be rejected here. The latter defense will be discussed below.

Claimant's signed statement, considered by the parties during the handling on the property, avers he was not present when the cuts were made. It is undisputed that Claimant worked with track forces doing the work of his craft on the days in question. Thus, the statement of the Roadmaster that no bond wires were cut without a signalman in attendance does not specifically answer the question of whether Claimant was present at the point where the breaking complained of took place. It is clear from the record that the track forces and Claimant were separated at times when we consider Carrier's statement in its submission: "When track gang finished renewing rails on one curve, and while Signalman continued his work to completion, they moved a short distance down the track to the next curve and started changing out the worn rails of said curve." There is no conflict in the evidence which requires resolution by the Board. Roadmaster says Claimant was in attendance. Claimant says he was not present when the bond wires were cut. Roadmaster does not say Claimant was present where the cuts were made, merely that he was in attendance. There is no dispute about Claimant working with track forces. To that extent he was in attendance and present on the days in question. However, there is no statement in the record by Carrier that Claimant was present at the site where the cuts were made. Claimant states without contradiction that he was not. His statement stands unrefuted.

As we have found that the work involved is Signalman's work Claimant had a right to be present at the place where it was being performed. Claim, therefore, will be sustained.

The question of a third party involvement in the dispute raised by Carrier has been considered. Accordingly, notice of the dispute was served on the Brotherhood of Maintenance of Way Employes which represents the track forces herein. That Organization in response to the invitation to participate responded, in relevant part, as follows:

"Our Organization is not a party in interest with respect to this dispute and, consequently, will make no submission or other representation with respect to it."

Despite the declination of the Maintenance of Way Employees this Board in the discharge of its statutory duty and in accord with Transportation-Communication Employees' Union v. Union Pacific Railroad Company (385 U.S. 157, 1966) has considered the dispute and has found that the work involved is covered by the Petitioner's Scope Rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 11th day of February 1972.