

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19446
Docket Number SG-19307

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) Carrier violated the Signalmen's Agreement when it allowed other than signal forces to perform signal work on the assigned territory of Mr. J. H. LaCava, Signal Maintainer, Glenshaw, Pa., at about 8:00 P.M., January 8, 1970.

(b) Mr. J. H. LaCava now be allowed eight hours pay at his straight-time rate. (Carrier's File: 2-SG-33)

OPINION OF BOARD: This is a Scope case in which the Claimant, Signal Maintainer J. H. LaCava, contends that non-covered employees performed signal work on his assigned territory on January 8, 1970, in violation of the Agreement, and that he is entitled to eight (8) hours pay at his straight-time rate because of the alleged violation.

FACTS OF RECORD

The pertinent parts of the Agreement are as follows:

"SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employees classified in Article I of this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:

(a) Signals including electric locks, relays and all other apparatus considered as a part of the signal system, excluding signal bridges and cantilevers.

(b) Interlocking systems, excluding the tower structure.

(c) Highway crossing protection controlled or actuated by track or signal circuits.

(d) 1. Signal Department conduits, wires and cables, overhead or underground.

"Note: See Mediation Agreement of May 5, 1942, and agreed interpretation thereto attached to this Agreement as Appendices A and B with respect to reconstruction and/or renewal of poles used jointly by Railroad and Western Union.

2. Power lines installed primarily for signal purposes. Where power is supplied from signal power lines for other purposes Signalmen's work will include line taps, transformers and service line up to and including a fused switch adjacent to said power line. Where power is supplied from other sources for Signal Department purposes, Signalmen's work will exclude work from such source to and including a fused switch or approved receptacle at designated point of delivery. Signalmen's work will include all work from such point of delivery to and including signal facilities.

(e) Wayside equipment necessary for cab signal, train stop and train control systems.

(f)

(g) Traffic control systems.

(h) Spring switches where point locked or signal protected, excluding work normally performed by track forces.

(i) **Bonding** of all track except in electrical propulsion territory.

(j) All other work generally recognized as signal work.

No employees other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and inspections of all signal apparatus and circuits as may be necessary to insure that the work is installed correctly and properly maintained. The term 'emergency' as used herein is understood to mean the period of time between the discovery of a condition requiring prompt action and the time an employee covered by this Agreement can be made available."

"RULE 14

(b) Employees notified or called to perform work not continuous with regular working hours will be allowed a minimum of two (2) hours and forty (40) minutes at the time and one-half rate and if held longer than two (2) hours and forty (40) minutes they will be paid at the rate of time and one-half, except as otherwise provided in paragraph (c). The time of employees so notified will begin at the time required to report and end when released. Time of employees so called will begin at the time called and end at the time they return to designated point at home station."

"RULE 16

Unless registered absent, the regular Maintainer will be called for emergency service on his assigned territory. The Signal Supervisor will advise with what employee the Maintainer is to register absent."

On January 8, 1970, at about 7:40 P.M., a train derailed two cars on the assigned maintenance territory of Claimant LaCava. The derailment occurred at Wildwood, Pa., which is 6.2 miles from Claimant's headquarters at Glenshaw, Pa.

On January 9, 1970, at about 5:30 A.M., approximately ten (10) hours after the derailment, the disputed work was performed at Wildwood by the track forces. This was before the regular hours of claimant. He was not registered off duty at the time and the Carrier did not call him.

In the course of working to repair tracks, according to Petitioners assertion on the property, the track forces did the following signal work:

"* * * Removed front lug and rod from switch circuit controller. Also disconnected shunt wires from switch circuit controller. They also broke bonds and removed rail."

The Carrier's initial description of the nature of the work, as set forth in a January 21, 1970 letter of Mr. R. S. Henry, Division Engineer, is as follows:

"At approximately 7:40 PM on Thursday, January 8, 1970 Extra East 4552 derailed two cars on #2 track east of Wildwood, Pa. Inspection of the cars and track following the derailment revealed that only #2 track was blocked and the cars were upright. The tool

"cars were not required and it was decided to reraill the cars with replacers. Trackmen were called in order to put the damaged turnout in safe enough condition to pull cars over. The union work done in order to do this was certainly not sufficient to call the Maintainer out. The removal of the lug and rod from the controller and disconnecting of the shunt wires from the controller were part of the emergency work done to get the balance of the train moved out." (Emphasis added)

The foregoing was spelled out in greater detail by Carrier in a May 6, 1970 letter by M. E. Cridlin, Asst. to Vice-President, Labor Relations.

"We have again gone into this matter and find that Extra 4552 East derailed two cars on No. 2 Track east of Wildwood about 7:40 p.m. Inspection of the situation on the ground indicated that only No. 2 Track was blocked and that the cars were upright, so that the tool cars would not be necessary, it being possible to reraill the derailed cars by use of retrackers. To do this, however, trackmen had to be called out to put the damaged turnout in safe condition to pull the cars involved over it.

The Division Engineer was personally on the ground and knew that no train except the one involved in the derailment would be in the area until some time after 9:00 a.m. on the following morning (January 9, 1970), in view of which it was not necessary to call a signal employe out on the night of January 8 because it was known that the signal employe could, on the following day, do any and all signal work which would be necessary.

The track forces in removing the stock rail and switch point about 5:30 a.m. on January 9 used a cutting torch to remove the rod from the switch point to the controller as this rod was damaged severely in the derailment. The wheels of the derailed car knocked off the wires on the left side of the turnout.

By the time the track forces and others got the cars rerailed and the turnout repaired for normal use, the signal employes were on duty and then proceeded to do all of the necessary signal work.

It was not necessary to have the signal employes out on the previous night as there was nothing for them to do until the cars could be re-railed and the turnout repaired in proper manner as explained above. In line with this, the claim of Maintainer LaCava for 8 hours overtime rate on January 8, 1970, is declined."

RULINGS ON PETITIONER'S CONTENTIONS

The Petitioner contends that a derailment created an emergency requiring claimant to be called for emergency service under Rule 16, that Carrier did not call him and instead, required track force employees to perform service reserved to him.

The definition of "emergency" in Rule 13 is such that Rule 16 could have been complied with in the circumstances. Hence, the only issue is whether signalmen's work was performed by track force employees.

Carrier's Division Engineer, Mr. R. S. Henry, took charge at the derailment shortly after it occurred and remained on the scene until the repair work was completed. The Carrier points to his testimony, apparently as reflected in Mr. Cridlin's letter of May 6, 1970, and from there the Carrier argues that no "bona fide" signal work was performed between the derailment and the regular hours of signal employees on January 9, 1970.

If the Cridlin letter was the only source of evidence from the Division Engineer, the Carrier would be in a stronger evidenciary posture. But the record contains other evidence direct from the Division Engineer, evidence which unmistakably supports Petitioner's contentions.

In his January 21, 1970 letter, the Division Engineer stated that "The union work done in order to do this certainly was not sufficient to call the Maintainer out." This is an admission, plain and simple, and it was made less than two weeks after the event. The Cridlin letter, coming nearly four months after the event, details the work performed as a result of the derailment, but nowhere does the letter deal with, retract, or directly refute the January 21, 1970 admission of the Division Engineer. And, although the Carrier's use of the term "bona fide" may slightly obscure the evidenciary import of the admission, the "bona fide" argument likewise fails to dispose of the admission.

The record, in sum, shows that Petitioner's allegations are supported by a preponderance of the evidence. Shortly after the event Petitioner's allegation was admitted by the Carrier official who was present at and in charge of the repair work from which the dispute arose. The Carrier had opportunity on the property to deal with the admission directly and unequivocally. Not having done so, the Carrier leaves standing of record on admission which must be regarded as having a substantive basis. We will therefore sustain 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

Award Number 19446
Docket Number SG-19307

Page 6

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.