

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19878
Docket Number X-19129

Joseph A. Sickles, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Pacific Lines)

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

(a) The Southern Pacific Company (Pacific Lines) violated the Agreement between the Company and the Employees of the Signal Department Represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions) and particularly the Scope Rule, Rules 5, 16, and 70, when it assigned or permitted employees not covered by the current Signalmen's Agreement to tamper with or otherwise disturb the train graph on the Tucson to Yuma CTC control panel.

(b) Coderman R. W. Treon be allowed compensation for a call of two hours and forty minutes at his overtime rate for June 23, 1969, and July 1, 1969, for loss of earnings suffered due to violation of the agreement when he was not called to perform his regular assigned duties. (Carrier's File: SIG 152-261)

OPINION OF BOARD: A train graph provides a permanent record of certain signal position indications and train movements through a designated section of a centralized traffic control territory. Certain information is marked on the graph by means of an electronically operated ink pen which automatically records the relative position of signals located at the end of each siding track represented on a control panel. The graph paper is marked and calibrated in time increments of two minutes each, moving three inches to the hour. The graph paper is driven by means of a drive roller which moves it under the automatic pen and across a hard surface.

The visible portion of the train graph lies horizontally on a table top. After the visible portion of the graph passes over the writing surface, it extends between a drive roller and a pressure-idler roller. There is approximately three hours of recorded time on the graph paper which is not visible during the time it is passing between the drive roller and the pressure-idler roller.

This dispute arose when, on two days, train dispatchers disengaged the graph from the drive rollers and partially removed the train graph from the machine, which results in a disengagement of the mechanism for a period of time.

The Organization alleged a violation of its Scope Rule which specifies that the Agreement covers, among other things, work or service performed on centralized traffic control systems.

There appears to be no dispute between the **parties** that the train graph is part of a centralized traffic control machine. Accordingly, the Organization urges that the Scope Rule is specific in nature and that no **show-**ing of job performance of "exclusivity" is necessary.

Upon initial consideration, it appears that the **Organization's posi-**tion may be well **taken** in that regard. See Awards 17665 (Gladden) and 10730 (**Ables**). However, the Board does not resolve the dispute on those **grounds**.

The Carrier notes that the Organization urges a dtfferenr claim before this Board than the one urged on the property. A review of the entire record indicates that the Organization does not **base** its claim upon train dispatchers removing paper (and **consequently** disengaging the **graph**) but the claim appears to deal with the restoration of **the** graph at a **later** time. In order for the train graph to coincide with the exact time, it **must** be **reset** after it is **dis-**engaged, and the Organization suggests that **such** restoration of the "on-time position" falls within the Scope Rule **definition** of **maintenance** and/or repair.

A review of the claim, as processed on the property, compels the Board to determine that the **concept** of maintenance **or** **repair**, via-a-via restoration of the time graph to "on-time position" was not **adequately placed** before the Carrier to **allow** it to respond thereto.

In the initial claim, the **Organization** alleged that the Carrier assigned and/or permitted employees not covered by **the** Signalman's Agreement (train dispatchers) to tamper with or otherwise disturb **the** machine graph by the act of **disengaging** the graph from the drive rollers and partially removing same from the machine. Although the claim designated the Claimant herein as responsible for all work connected with the maintenance, repair and testing of the machine, it made no reference to subsequent restoration of the machine to its appropriate "on-time **position**."

In the Company's initial denial it admitted that the dispatcher, at times, releases the drive roller mechanism to lessen the tension on the train graph in order to unroll the graph.

In its appeal, the Organization again cited the disengaging of the machine and stated that "repairs" **and** "**testing**" is work which should be performed, not by the train dispatcher, but by **the** signalman. Again, no reference was made to restoration **of** the on-time position.

Subsequent to the final denial by **the** Carrier on the property, the Organization submitted to the Carrier a **statement** from the Claimant. In **that** document, he stated:

"They (dispatchers) then remove at least part of the recorded graph from between the drive roller and the pressure-idler roller to examine it, after which they attempt to put it back, but when they do, the time on the graph is always off from five to fifteen minutes, compared with the Standard Clock which hangs above and behind each CTC Machine."

In the penultimate paragraph of Claimant's same statement, he says that, "If the time of the graph is disturbed, and attempts made to reset it, this clearly is an infringement of our Scope Rule, at the very least." The covering letter from the Organization also makes reference to disturbing the time on the graph when the machine is tampered with. But, it must be noted that the Organization never suggested, on the property, that the train dispatchers reset the machine. We feel that such lack of allegation, in that regard, is crucial to our conclusion.

It has been suggested that the Claimant's statement referred to above is not properly before this Board for review because it was submitted subsequent to the final denial of the Carrier on the property. This Referee has recently noted that documents received prior to notification of intention to file a submission with this Board are properly viewed as matters having been considered on the property. (See Docket No. X-19013).

Nonetheless, while the document is properly before the Board, the question still remains as to whether or not the issue of restoration of the "on-time position" was clearly raised on the property. We feel that it was not. Although there was innuendo in the later stages of the handling of the matter on the property, as stated above, it was never specifically designated that the dispatch employees on June 23, 1969 and/or July 1, 1969 actually reset the machine, but rather the claim appears to be that they tampered with or otherwise disturbed the graph.

Under the Scope Rule before us, it does not appear that a disengaging of the machine constitutes a violation, whereas a restoration to the "on-time position" by other employees may well fall within the prohibitions of the Scope Rule.

In reaching this conclusion, this Board is not unmindful of the decision in Award 17665 (Gladden) in which a violation of the Scope Clause was found and the claim sustained. In that decision the Board determined that the CTC machine required "maintenance" to bring it into conformity with "standard time", and that such "maintenance" was within the Scope Rule. However, in that case the claim specifically stated that the violation of the Scope Rule was accomplished by allowing or permitting train dispatchers to "adjust" time on the train graph. Such an allegation is not before us in this case. If it were, the result herein may have been different.

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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 not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.