

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20369
Docket Number SG-20091

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Texas
(and Louisiana Lines)

STATEMENT OF CLAIM: **Claim** of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company--Texas and Louisiana Lines (former Texas and New Orleans Railroad Company):

On behalf of San Antonio Division Signal Maintainer E. Lillie, Jr., for 269 hours pay at **time** and one-half rate account signal supervisory personnel working while falling rock detectors **were** out of service at **Langtry** during June **and** July, 1971.

OPINION OF BOARD: The main line of the Southern Pacific Transportation Company between Del Rio **and** Sanderson, Texas, **winds** through several deep cuts made through rock and sandstone formations. Due to many factors, materials become dislodged **on** steep bluffs in these cuts and slide or roll down to the tracks below. Periodically these bluffs are "scaled". **On** June 24, 1971 scaling operations began near Mile Post 447, and Signal employees removed the rockslide detector fences and completely dismantled all protective **de-**vices which had been incorporated into the Carrier's Signal System. Temporary electrical wiring or "jumpers" were installed into the signal system to make the signals operate "False Cleared" as if the rock **fences** had not been removed. Thus it **became** necessary to provide the protection normally afforded by the rock fences through a visual surveillance and in the case of actual falling rocks the **manual removal** of the temporary **jumper** wires and the application of a "shunt" to the signal track circuit. The scaling operation was concluded on July 12th.

The Organization contends **that** the Carrier violated the Signalmen's Agreement, particularly the Scope Rule, when it used Assistant Signal Supervisors **Shaw** and **Haas**, not covered by the Agreement to maintain the visual and potentially manual signal protection for its trains during the time Signal **employees** were not assigned. The Carrier contends that Assistant Signal Supervisors **Shaw** and **Haas** **never** performed any **"work"** that **came** within the Scope Rule. It is not disputed that there were no instances of **rocks** falling during the period of the Supervisors' evening watches.

The Scope Rule provides that the "Agreement shall apply to work **or** service performed by the employees specified herein in the Signal Department **and** governs the rates of pay, hours of service and

working conditions of all employees covered by Article I, engaged in the ...maintenance... [of] detector devices connected with signal systems..."

That the "shunting of the track and the removing of the false battery from the coil relay, thereby putting the signals at the stop position", the work that would have to be done if a rock slide was visually detected, was within the Scope Rule is clear and supported by many Awards of this Division. The question now to consider is whether or not the Scope Rule was violated where supervisory employees, not covered by the Agreement, whose sole responsibility for segments of time running from 11, 12 and 13 consecutive hours was visually protecting Carrier's trains from rock slides, and the sole means of actuating the signals to provide this protection for Carrier's trains when and if needed was the shunting process described above? We decide that in the narrow circumstances of this case the Scope Rule was violated.

The statements of Assistant Supervisor Shaw clearly shows that the sole, continuous function of the supervisor was the protection of Carrier's train during stat-ad hours throughout the night.

Assistant Signal Supervisor Shaw stated:

"...then I would go back to where the work had been done and sit up during the night.... To the best of my knowledge, this is the time I spent at nights: June 24, 8 P.M. - 7 A.M., June 25, 7 P.M. - 7 A.M., June 26, 9 P.M. - 8 A.M., June 27, 6 P.M. - 7 A.M... July 3 - P (sic) P.M. - 7 A.M. Of these nights I was watching for fallen rocks at the two bluffs, there were never any rocks that fell."

Clearly then, the sole function of the Supervisors during the night watches at the bluffs was the protection of trains from rock slides.

In this case the sole method of protecting the Carrier trains in the event of a rock slide was the use of the shunt and cable process by an employee. There is no record of the Supervisors having any other communicative device that could provide communication with trains in the area; nor was there any defense offered by the Carrier that the Supervisors had radio equipment to contact accessible signal maintainers in the area capable of applying the shunt and cable process in the event of a rock slide. Indeed, Signal Foreman Mouton stated in his report:

"In event of a rock slide I was to immediately shunt the track and remove false battery from coil relay, thereby putting signals on either side of rock detector at stop position. As I had no radio on the truck I was using it

"would be delivered to the train the cause of stopping either by walking to train or ride truck if possible to stopped train."

It is uncontroverted that when Signal Maintainer **Lille** performed the **same** functions as Signal Foreman **Mouton** and the two Supervisors, his instructions were the same in the event of a rock slide, "remove the battery connection from the relay to provide signal protection". It would be most unreasonable to speculate that the Supervisors had another means available to them other than the method of shunting which is Signal Maintainers Scope work. **The** record leaves little doubt but that had a rock slide occurred the Supervisors would have exercised their only option, that of the shunting and cable process which is Signal Maintainers Scope work.

We find that the shunting and cable process capability was the sole method of protecting trains in this case; and also find that this capability was so enmeshed in the work performed by the Supervisors on the bluffs that the work done by the Supervisors must be considered Scope "work" or "service" even though there actually never was a rock slide where the Supervisors were called upon to utilize the "shunting and cable. capability.

This decision is a narrow one and in no way infringes on management **perogatives**. Carrier is not required to use Signalmen at every location where a rock fence has been removed. It is solely up to the Carrier to decide whether or not the risks involved **at** a given site requires visual protection coupled with a "shunting" signaling capability. In a great many circumstances, the bluffs might not be as steep, the traffic not as substantial, the presence (and resulting protection) of other Carrier employes in the vicinity greater, the usability of other **communication** devices possible etc., so that the Carrier could, in the sole discretion of the Carrier, decide that no employes would be needed at the site. But, when the Carrier decides that an employe is necessary and the sole **means** of protecting the trains is the shunting process, then that work must be given to an employe covered by the Signalmen's Agreement.

Award 11799 does not support Carrier's position in this case. In 11799, in the movement of a **CTC** machine the Organization alleged that an Assistant Signal Superintendent was standing by to perform signal maintainer duties should a need for them arise, instead of standing by to perform his **own** duties as a Supervisor. The Carrier demonstrated that the Organization's **position** was **erroneous** by showing that an employe performing supervisory functions was required to go from one station to another to supervise a Signal Maintainer stationed at another position along the line. **Thus** the Carrier demonstrated that **supervisory** personnel **were** present to supervise the employes simultaneously on duty and the employes on duty

were present to perform any signal work that might occur.

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 violated.

A W A R D

Claimant to be paid time and one-half rate for the time submitted in his claim, less the hours submitted for the **time** marked off on July 2 through July 5th; less all the **time** claimed while Signal Gang Foreman Mouton, an **employee** covered by the Signal Agreement and not excepted from performing such duties by the Scope Rule, was on duty; less the time claimed for **time** in which the Supervisors were not on the bluff property; less the time signalman **Lillie** worked overtime on June 27th.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **23rd** day of August 1974.