

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20526
Docket Number SG-20077

Joseph **Lazar**, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Western Maryland Railway Company that:

(a) Carrier violated the Signalmen's Agreement, particularly the Scope, account of track forces removing signal bond wires before replacing a broken rail in track circuit **E-2006T**, between Garret East End and Garret West End.

(b) **Maintainer W. E. Bowser** now be allowed two hours and forty minutes **overtime** rate of pay due to track forces performing this signal work. (BBS Case No. 1-1971)

OPINION OF BOARD: The General **Committee** of the Brotherhood of Railroad Signalmen on the Western Maryland Railway Company claim that the Carrier violated the Signalmen's Agreement, particularly the Scope, account of track forces removing signal bond wires before replacing a broken rail in track circuit **E-2006T**, between Garret East End and Garret West End.

On November 16, 1970, the crew of Train **AJ-1** reported to the **Dispatcher** that eight inches of cap **was** missing **from** the north rail in the vicinity of Garret, Pennsylvania. When track forces in that area reported for duty at **6:00** A.M., they were instructed to proceed to Garret and replace the broken rail. According to the **report** of the Track Foreman, as stated by the Carrier, the break was at the rail joint. The rail contained a short bond wire about four inches long attached to each of the rail ends and which acted as a jumper between the two rails to maintain electrical continuity. Angle bars are bolted to the flange of each of the rails to reinforce the rail joint.

Petitioner states that the "broken rail was located in track which carried an electric circuit which is a part of the Carrier's signal system. The defective rail had a part of its cap broken out within the angle or splice bars at one of its ends in such a way that it did not open the **electric** signal circuit " (**R5**). Petitioner, in its letters of handling with the Carrier, has stated "This rail was broken in the angle bar and did not open **the** track circuit." (**Brotherhood's** Exhibit No. 1, No. 3, No. 5, No. 7).

The Carrier does not deny Petitioner's statements that the electric signal circuit was not opened. The Carrier states, however, that "Although it is possible that the angle bars could maintain the circuit, the signal system was not then in a normal serviceable condition." Also, the Carrier states, "The circuit was being maintained only by the angle bars and not by the bond wire." **(R32)**. We must conclude from our review of the record that the electric signal circuit was not opened. We must also conclude that the track and the signal system were not at the time id a "normal serviceable condition" when in replacing the rail, the track forces removed the angle bars and knocked the bond wire from the opposite end of the broken rail. The record shows that Claimant Maintainer **Bowser**, whose headquarters is at Meyersdale, was notified of the broken rail at **7:30** A.M. and that he and his Assistant proceeded to Garret, and bonded the replacement rail at **8:05** A.M.

The Scope **Rule** of the Agreement embraces, **in** paragraph **(j)**, "Bonding of all track." This Agreement rule, between the **same** Brotherhood of Railroad Signalmen and Western Maryland Railway Company, was interpreted and applied in Award Number 17359, made on the Claim that the same Claimant (Maintainer **Bowser**) was sent **home** and "track forces were allowed to break bonds" in the process of reconstruction of track. This Board (Referee David H. Brown) issued a brief opinion denying the claim, stating:

"The facts herein are essentially similar to those in our Award 12329 (Dolnick). When the derailment occurred, Carrier **summoned** the proper signal personnel and kept them in service until they had taken the signal circuits out of service. The work that followed was a salvage operation unrelated to signal **installa-**tion or maintenance."

In Award 12329, on the basis of which Award Number 17359 was determined, Referee Dolnick states:

"**In** Award 8069 (**Beatty**) we sustained the claim because the breaking of the track bond 'had the effect of opening the circuit.' We said:

'We are inclined to believe that the mere cutting, r-al, dismantling, destruction or salvaging of equipment is not necessarily reserved to those who construct **it** in the first place, for such operations seldom if ever require comparable skills, but in the case at hand we believe the breaking of the track bonds, **which** had the effect of opening the circuit and affecting the whole signal system within the **CTC** was an appurtenance to and an integral part of the signal system and that under these circumstances it is embraced within the broad language of the contract...'"

Referee Dolnick, in Award 12329, points out therein that "Signalmen were present and did open the circuit and took the signal circuits out of **service** before track **men** broke the rails. The breaking of the bonds by the track men did not affect the signal system. It was a salvaging operation."

Award No. 17359, accordingly, rendered between the same parties hereto on the same agreement provisions here in dispute, was based on facts and circumstances of "a salvage operation" wherein signalman were not denied their agreement rights to take the signal circuits out of service since the signal system was inoperative due to the rails having been torn from the tracks in the derailment there involved. In the instant case, however, the track forces were dealing with an electric signal circuit which was not opened, and there was a breaking of the track bond by the track forces. This was not "**a** salvage operation" in the meaning of **Award 12329** and the controlling Award No. 17359 even though replacement of track was involved.

Award No. 17359, based upon Award 12329, which in turn is based upon earlier, reasoned awards, uses a simple test as to whether a scope rule violation exists when there is a breaking of the track bonds by track forces. The test is whether the **breaking** of the track bond "had the effect of opening the circuit". The test is not whether the signal system is in a "**normal** serviceable condition" or whether the track required replacement. If the breaking of the track bond, as in the instant case, "had the effect of opening the circuit," **we** are required by the precedential force of Award No. 17359 to conclude that there was a violation of the Agreement. It is too late, in the absence of palpable error, to escape the bite of the doctrine of stare decisis.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1974.