NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21019
THIRD DIVISION Docket Number SC-20673

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(George P. Baker, Robert W. Blanchette, and
(Richard C. Bond, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo) that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope (Rule 1), when it required and/or permitted track forces to remove signal bond wires near Mile Post D. 06.5 on Friday, November 17, 1972.

(b) Carrier should now be required to compensate Leading Signal Maintainer A. J. Smith, four (4) hours at his pro rata rate because of said violation. /Carrier Case No. BRS W-221

OPINION OF BOARD: Petitioner contends that Carrier violated the Scope Rule of the Agreement when it authorized "track forces to remove signal bond wires . . . on November 17, 1972." Compensation is demanded in behalf of Claimant for "four (4) hours at his pro rata rate because of said violation."

The issue of whether or not the disputed work is specifically covered by the Scope Rule of the Signalmen's Agreement is vigorously disputed by Petitioner and Carrier; the former in the affirmative, the latter in the negative. Both contestants cite many prior Awards as supporting precedents. Some are germane, some are not; others appear to be in conflict with each other.

We are persuaded by the view, and we so hold here, that the cutting or removal of signal bond wires from an active track circuit, obviously causing the opening of the circuit, falls within the specific coverage of the Scope Rule of the Signalmen's Agreement now before us. Accordingly, that the use of other forces to perform such work violated the Agreement.

Nor is it an adequate defense, as Carrier contends, that the breaking of the bond wires "was merely incidental to the removal of the rails".

See Awards 6584, 8069, 13607, 18999, 20555, 20835, and 20872 (citing prior Awards 9614, 13239, 17359, and 20526, among others). In most, if not all, of the latter Awards the factual situations are practically identical with those involved here in relation to the disputed work.

We reach the foregoing conclusions under the specific language of the confronting Scope Rule covering the "construction, installation, inspection, testing, maintenance and repair either in the signal shop or field of . . . bonding of track for signal and interlocking purposes." The specific language and clear intent of "maintenance and repair" and "bonding of track" includes the severance of the bond wires, which is precisely the nature of the disputed work here involved.

We do not concern ourselves with subdivision "c" of the Scope Rule relating to "other work generally recognized as signal work", which has been categorized in many prior Awards as "general" in nature involving application of the concepts of "exclusivity" and "past practice". These issues are not before us.

Carrier cites many prior Awards assertedly supportive of its position here, but these for the most part relate to entirely different factual situations. Thus, for example, Award 14026 dealt with "pulling a switch to turn off compressors"; 13801 concerned "removal of bare wooden poles no longer part of the signal system"; 13703 related to purchase and installation of "assembled factory equipment"; 12664 dealt with "construction of wooden switch heater boxes for snow r-al"; 12510 related to "fabrication of wooden boxes as temporary signals"; 12023 concerned "removal of wires and cross arms"; 11431 dealt with "unloading of telephone poles and cross arms"; 20543 involved a different Scope Rule; 18158 and 20157 related to installation of "frogs" under a clause of the Scope Rule held to be general in nature; 19435 dealt with "replacement of insulated joints"; 15149 related to "removal of bond wires incidental to bridge repairs"; 14465, 14466 and 14467 concerned "shunting of track circuits incidental to rail inspection"; 14291 dealt with "turning off the power in a switch machine"; 13099 related to "construction of foundations, digging holes, building forms and pouring concrete"; and 20536, 20712 and 20898 dealt with "removal and scrapping of bond wires in the process of installing welded rail".

We deal now with subdivision "(b)" of the claim as to "compensation" allegedly due to Claimant. Petitioner's claim, as revealed in the correspondence on the property and in the submission to this Board, is rather unique. No claim is made for "call out" pay, or "relief work" payment, or "punitive pay" for overtime or "work on rest days". Petitioner's initial claim letter of November 27, 1972, states succinctly:

> "Because of the distance to the location in question, the time involved would have taken 4 (four) hrs. to go to the job site, do the work required, and return, This is the time claimed."

Neither in the claim, nor in its correspondence on the property, nor in its present submission to the Board does Petitioner cite any Rule in the

Agreement in any manner justifying such payment to this Claimant. The fact is that during the precise four hour period stated in the claim, Claimant was actually at work and under pay on another assignment. Removing him from that assignment would obviously result in a four hour loss of pay at straight time, which would be replaced by four hours compensation at straight time under the claim now before us. Hence, tit for tat, and absolutely no monetary loss to Claimant. To award Claimant additional compensation of four hours pay under the claim would manifestly invoke a penalty not provided for under the Agreement and not countenanced by the overwhelming weight of authority in this Division of the Board.

See Awards 12824 (McGovern), 13200 (Zack), 14853 (Dorsey), 17701 (Jones), 19649 (Rosenbloom), 19750 (Lieberman), 19832 (Sickles), and 20921 (Quinn), among many others.

Petitioner contends that the issue of "penalty payment" was not raised on the property; that it constitutes "new matter" inadmissible for consideration now. We do not quarrel with this established principle. But, the issue of whether any payment is due this Claimant was raised on the property. Carrier's Letter of March 26, 1973 states in closing:

> ". . . Furthermore, the Claimant did work his normal tour of duty on the date of the claim.
>
> " Your claim lacks merit and agreement support and is denied."

We recognize that prior Awards are legion on the proposition of whether a Claimant is entitled to pecuniary award once a contract violation has been established, but no actual monetary loss is shown. Nor are these Awards consistent with each other. In the particular circumstances of this case, however, we adhere to the principle that payment must be limited to actual pecuniary Loss.

See Awards 10984, 12131, 12962, 13171, 14937, 15477, 16188, 17517, 17994, 18540 and 18695, among many others. See also cases cited above.

We are compelled to the conclusion, therefore, that absent any pecuniary loss to Claimant, as demonstrated above, and absent any Rule in the Agreement supporting the monetary award here demanded, we have no alternative but to deny subdivision "(b)" of the claim. We are not authorized to rewrite the Agreement or to provide a Rule where none exists.

"Although, we find a sustaining award necessary to preserve the rights of the Organization under the Agreement, we do not find the same need to sustain a money award. It appears that all the Claimants were fully employed and suffered no damages. See Award 12961 (Hall)." See Award 13171 (Wolf).

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 Employes involved in this dispute are respectively Carrier and Employes 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

Paragraph "(a)" of claim sustained.
Paragraph "(b)" of claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.