

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 21883
Docket Number SG-21384

Nicholas ii. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Robert W. Blanchette, Richard C. Bond
(and John H. McArthur, 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):

System Docket W-58
Southern Region - Southwest Division Case S-5-74

Carrier violated the current Signalman's Agreement as amended, when it required and or permitted the Fort Wayne track dep't. gang assigned to Marion, Indiana to remove a Sperry Car rail found to be defective in the third week of April 1 from the main track in the 3W track circuit without maintainer setting signal at stop and without maintainer removing the bonding. Bonding was removed by track forces in violation of Rule 1, 2, 13(i) and title rule of the current agreement. Violation occurred [sic] on May 02, 1974.

Carrier now be required to compensate Maintainer R. W. Hartsock in the amount of 2.7 hours at the overtime rate for his assignment on May 02, 1974 for denying him the opportunity to perform his regular assignement.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement between the parties when it used track forces to open and enter into an in-service electrical signal circuit by breaking signal rail bonding. It is the Organization's position that its Scope Rule specifically covers "bonding of track for signal and interlocking purposes", and that work on signal bond wires should only be performed by employees classified under its agreement.

The facts and circumstances of this dispute are strikingly **similar** to those in Award No. 6 of Public Law Board No. 1442, between these same parties. There the Board denied the claim with the following:

"Findings: On **some** date prior to October 19, 1972, Carrier began the project of replacing bolted rail with continuous welded rail **over** a 75 mile portion of single track territory. The old rail was **removed** in the following **manner: maintenance** of way **employees** removed the connecting bolts from the rail joints, removed the spikes and plates which held the rail to the ties, and then used a crane to lift out the disconnected sections of rail. Where there were rail bonds between the sections of bolted rail, they were left in place by track **forces** and were broken by the lifting action of the crane. Prior to October 19, **Claimant**, lead **signal maintainer** had been **following** the welded rail gang in his area and had been present when the rail **was removed** and the bonds broken. It does not appear that he performed any **function** in connection with the bond breaking other than to be present. On **the 19th**, he was instructed not to follow the gang but to perform other work on his section. The claim is that when **welded** rail gang broke the bonds without the presence of a signalman, they violated the scope rule of the **Signalman's** Agreement.

The Scope Rule provides for coverage of **all employees** of the Signal Department engaged in construction, **installation**, inspection, testing, **maintenance** and repair of, among other things, 'bonding track for signal and interlocking purposes.* The question is whether this language covers the breaking of the bond wire in the **track removal** operation under the **circumstances** of this case.

Various awards of the **NRAB Third** Division have considered similar questions on other **properties** and have reached different results depending on the particular factual circumstances. See, e.g., Awards 8069, 20526, 20536, 20555.

"Under the circumstances of this case, we **think** that there was no scope rule violation. The track involved had been taken out of service and there were no signal **functions remaining** in connection with the removal and scrapping of the bolted rail. Whatever **signal** adjustments had to **be made** in connection with road crossing **signals** affected by the breaking of the bonds had **obviously already been made** by the **time** of the instant claim. There is no contention that such adjustments or any work in connection **with** necessary **rebonding** after the welded rail **was installed, was** done by other than **signal employees**. It does not appear from the record that if **Claimant** **had been** present on the dates in question, he would have **performed** any function in connection with breaking the bonds, or that the breaking of the bonds would have been accomplished in any different **manner** than it was **accomplished** in his absence.

Under the particular **circumstances** of this case, **we** conclude that neither the Scope **Rule** nor cited awards support the **claim**, and we therefore will deny it."

On the basis of Award No. 6 of Public **Law** Board No. 1442, between these parties, we shall deny 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

The **Agreement** was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST : *A. W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.

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