

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22671
Docket Number SG-22365

James F. Searce, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope and Rule 16, when it required and/or permitted Tony Reed, Yardmaster, Grafton, W. Va. to perform work designated as signal work as defined under Scope of the current Signalmen's Agreement.

(b) Carrier should now be required to compensate Signal Maintainer James E. Lucas for a minimum call of two hours and forty minutes at one and one-half times his regular rate of pay."

/Carrier file: 2-SG-4987

OPINION OF BOARD: On the evening of September 26, 1976, a signal light, which governed the movement of eastward freight trains entering the Carrier's yard at Grafton, West Virginia, was observed flashing or flickering "on" and "off". The Supervisor-in-charge, purportedly assuming it to be a broken rail, dispatched the Yardmaster on duty to verify his assessment of the problem. A broken rail was found; it was part of the "live track circuit" for the Grafton yard. The discovery occurred sometime around 9:30 p.m.; the rail was replaced by track forces the following morning, around 4:00 a.m. The Claimant -- who was Signal Maintainer assigned to the territory in which this incident occurred -- was notified around 7:20 a.m. of the replacement and instructed to make the necessary installation and bonding of signal apparatus to the replaced rail. Claimant herein disputes the Yardmaster's authority to "trouble-shoot" the problem of the night before, contending that such work was signal work and that he should have been called out.

The essence of this case is whether the actions of the **Yardmaster** on the evening of September 26, 1976, infringed upon the protected activity of a signal maintainer (Claimant). The Carrier asserts that the Yardmaster was sent out to "find a broken rail." As it turned out, **that was** the problem. In point of fact, however, the Yardmaster was dispatched to the site because of an intermittent signal problem; it may or may not have been a broken rail. We note that the track in question **was being** used for eastward freight trains and that the malfunction signal was part of a circuit some 1700 feet in length **and** was part of a system being used to hold such trains while yard switching took place. With it being noted that our decision herein is restricted only upon the potential safety factor involved, i.e. the **broken** rail, **we** deny the Organization's claim, which is not without merit. We are not unmindful of the Petitioner's concern that such actions, even if of themselves not violative of the **Agreement**, could lead to an incursion into protected activity, but we find that the specific circumstances in this case on the narrow question of safety form the basis for denying this 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

That the Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.