

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22767
Docket Number SG-22142

Rolf Valtin, Referee

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

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the current agreement between the (former Pacific Electric Railroad Company) and its **employees** represented by the Brotherhood of Railroad **Signalmen** effective September 1, 1949 (including **revisions**) particularly the Scope Rule and also misapplied **Rules 22 and 23** of Article 5, when it allowed a **signal** gang to perform work that belongs to the **Bonder and Welders**.

(b) **Mr. L. Sirus** and **Mr. A. Lozano** be compensated for four (4) hours each at the time and one half rate for December 14, 1975." /Carrierfile: SIG 152-359/

OPINION OF BOARD: The two **claimants** in this case occupy the classification of **Bonder and Welder**. This is **one** of about a dozen classifications covered by the Agreement. Another classification is that of **Signalman**. On Sunday, December 14, 1975, in a working context about to be described, **some** **Signalmen** performed **some** rail-bonding work. On the grounds that this is work which is reserved for **performance** by occupants of the **Bonder and Welder** classification, the claimants are claiming 4 hours' pay at time and a half for the Sunday.

The work arose on the Harbor Belt Line Railroad. At **some** stage prior to the Sunday, the Los Angeles County Flood Control District installed a storm drain at a location identified as Figueroa and B Streets. The installation required the prior removal of a section of track as well as the flashing-lights signals at the grade crossing. Members of the Track Department replaced the section of track (and had also removed it prior to the installation of the storm drain). Signal Gang No. 3 was called upon to replace the flashing-lights signals. It consisted of a Signal Foreman and

three Signalman. The **assignment was** carried out on the **Sunday**. The work **performed** by the Gang was **not** confined to the replacement of the flashing-lights signals. It included the rail-bonding at the replaced section of the track. The record does not reveal how long it took to do **the** rail-bonding work.

Though the Agreement **is** of **multi-classification** coverage, it contains but **one** Scope **Rule**:

'This Agreement covers the rates of pay, hours of **service**, and working conditions of all **employees**, classified in Article 1, engaged in the supervision, construction, installation, repair, reconditioning, inspecting, testing and maintenance, either in the shop or in the field, of any and all signal and telephone systems and/or interlocking systems, including all apparatus and devices in connection therewith, and such other work as is generally recognized as signal work."

By both parties' positions in this case, the Scope Rule is to be read as bringing rail-bonding within its coverage. This, **however**, is of no help in deciding the case. For, **on** the one hand, both Signalmen **and** Bonders and Welders are among the **employees** "classified in Article 1". **And, on** the other hand, the Scope **Rules** **makes** no classification delineations among the functions which form the bundle of work **covered** by it.

The Signalman classification (**Rule** 7 under Article 1) reads:

"**An employe** assigned to **perform** mechanic's work on electrical or mechanical signal **or telephone** apparatus under the jurisdiction of the Signal Engineer."

The Bonder and Welder classification (Rule 8 under Article 1)
reads:

"**An employe** assigned to perform signal and rail bonding and welding under the jurisdiction of the Signal Engineer."

Rules 22, 23 and 24 are part of Article V, titled "**Seniority**".
They read as follows:

"Rule 22. Seniority Begins: Seniority begins at the ~~time an employe's~~ pay starts in the seniority class in which-employed, except that, an **employe** filling a temporary vacancy in a higher class as a result of an **employe** being **absent** due to leave of absence, vacation, illness or other physical disability will not establish seniority in such higher class.

Seniority classes are established as **follows**:

<u>class</u>	<u>Classification</u>
1	Assistant Signal Supervisors
2	Signal Inspectors Signal Foremen Leading Signalmen Belay Repairmen Signalmen Interlocking Maintainer
3	Bonding and Welding Foremen Leading Bonders and Welders Bonders and Welders
4	Assistant Signalmen
5	Assistant Bonders and Welders
6	Helpers

Rule 23. Seniority Rights: Rights accruing to employes **under** their seniority entitle them to consideration for positions in accordance with their relative length of service as herein provided.

Rule 24. Seniority in Other Classes: An **employe** will have seniority in his own class and **all lower** classes; except that employes **in** classes 1 and 2 will **not have seniority in** classes 3 and 5, and employes in class 4 will not have seniority **in** class 5."

The Organization makes these **arguments**: that the **Scope Rule**, in contrast to what is true of most Scope Rules, covers two separate crafts -- **signal employees**, on the one hand, and bonder and welder **employees**, on the other; that rail-bonding work, both by what is expressly stated in Rule 8 and by what is not stated in **Rule 7**, is **obviously** the work of the Bonder and Welder craft; that the separateness of the two crafts is not established by the Classification Article **alone** but, rather, is established by the Seniority Rules **as well**; that to establish separateness via **seniority** regulations is to establish separateness in the most **fundamental** sort of way -- for an **employee's seniority rights** add up to his most valuable possession; and that the exceptions laid **down** in Rule 24 -- the exceptions which bar an employee from holding seniority in particular lower classes -- are significant in that they **remove** any doubt which might be entertained as to the separateness of the two crafts by a reading of Rules 22 and 23 alone. In sum, the Organization is saying that an employee cannot be both a signal employee and a bonder and welder employee and that it **must** follow that the Agreement was here violated.

We view these arguments as holding clear strength, and, were we presented **with** a case of first impression, we might well be disposed to uphold them. But **the fact** is that we are confronted by an area **on** which there is arbitral history and on which the arbitral history is one-sidedly against the Organization. The real question is whether that history should be applied as dispositive. And, unless one is prepared to provide encouragement for the endless **relitigation** of the **same** issues, we believe that the question must be answered in the affirmative.

Reference is to Awards 20543, 20544 (**Eischen**) and 20784 (**Quinn**) -- **all** involving these two parties, all involving the present issue, and all in the hands of the parties when the present claim **was** filed (Awards 20543 and 20544 having been issued on December 13, 1974, and Award 20784 having been issued on July 13, 1975). We recognize that the last two Awards were **mere** re-applications of what was found and held in the first Award. But this does not alter the fact **that** they constitute rejection of the same claim which is here made. We also recognize that the lead-off Decision (Award 20543) dealt with the matter **in** terms of the exclusivity doctrine -- akin to the approach taken in the usual type of Scope **Rule** jurisdictional question -- and therewith relied on the nature of an exclusivity claim and the

strength of the showing with which it must be accompanied **to** prevail. But we cannot reject the approach as clearly fallacious -- for **some overlapping** under some circumstances may be expected among classifications separated by seniority classes no less than among crafts separated by Scope Rules. And we recognize, finally, that the lead-off Decision in part relied on the fact that "the record indicates that for some 12 years former Pacific Electric Signal Department **employees** have been doing some bonding work in emergency repairs to signal failures or damages." But the Decision as a whole cannot be read as applicable to emergency repairs only. And the third Award applied it to all three claims presented in that case -- with one of the claims involving a full day's week-end stint by Signelman, quite as here.

The evidence in our case does not extend to showing precisely how, when **and for** what duration the Signalmen performed the rail-bonding work. Nor has the Organization urged us to distinguish the present case from the cases covered by the prior Awards -- i.e., the Organization is not saying that it accepts the prior Awards but that it should here prevail because something different is **involved**. On what we have before us, we think it is legitimately **assumed** that the rail-bonding work was a small and incidental part of the Signalmen's work on the day in question.

We believe that our proper course is to apply the prior Awards as dispositive of this **circumstance**. If **even** such **small-and-incidental** performance of rail-bonding work by Signalmen is to be proscribed, given the presence of these Awards, **we think that it** must come **about** through negotiations between the parties. In the meantime, **however**, we caution the Carrier against seeking to extend **things**. Becoming loose **in** reliance on the prior Awards and the present Award will bring to the fore the Organization's intrinsically **strong** arguments.

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;

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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 denied.

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

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of **February** 1980.

