

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30243
Docket No. SG-30876
94-3-92-3-716

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Consolidated Rail Corporation (CONRAIL):

- (A) Claim on behalf of P.A. Conrad, on account Carrier violated the Signalmen's Agreement, particularly the Scope Rule, when it permitted non-agreement employees to perform Scope work of shunting track circuits for signal tests on February 26, 1991.
- (B) Carrier should now be required to make Claimant whole for the loss of overtime work opportunity by compensating him for eight (8) hours pay at his time plus one-half rate." Gen'l. Chmn's. File No. RM2108-40-691. Carrier's File No. SG-327. BRS File Case No. 8703-CR.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Scope Rule of the pertinent Agreement specifies:

"These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work: (Emphasis added)

- Interlocking systems
- Block signal systems
- Car retarder systems
- Remote control of switch and signal systems
- Wayside train signals
- Train order or train start signals
- Cab signal, train control or train stop systems other than that portion on moving equipment...
- ...Impedance bonds, signal bonds and track connection leads".

On February 26, 1991, the General Inspector performed certain tests by use of a shunt wire on the rails, which resulted in a claim by the Organization, on behalf of a signal maintainer.

The Carrier concedes that the Inspector was performing speed and signal tests with the Transportation Department, to test the efficiency of train and engine service employees in observing Carrier operating rules.

The Carrier contended, while the matter was under review on the property, that non-bargaining unit personnel had performed such test historically; the claim was, at best, de minimis; and that the signal maintainer Claimant was on duty and under pay at the time.

The Organization denied that the claim was de minimis, pointing out that a significant period of time was devoted to performing the tests on the day in question. Moreover, it denies the asserted historical utilization of non-bargaining unit personnel to perform the work.

While the Scope Rule may have been determined in prior awards to be general in nature, there is a certain degree of specificity to the language of the Rule and the cited awards have given a certain stature to the claim under consideration to the point that it could be argued that the employee organization has established a prima facie case, and that it is incumbent upon the Carrier to establish its defenses by a preponderance of the evidence.

In any event, the handling on the property does not show specificity concerning asserted past practices, nor is there specific showing of the time involved regarding the "de minimis" argument. However, we have noted that the Carrier's arguments referred to tests in the plural so that the Organization's assessment at the time involved would not appear to be unreasonable.

It is interesting to note in the awards cited by the Organization in its submission that, as far back as 1963, Third Division Award No. 11507, held that there was "no question" that the installation of a temporary shunt is work on the signal system circuit. That award cited Award No. 3688 for that same proposition. See, also, Award No. 12627 and Award No. 18384. The just-cited 1971 award specifically stated that:

"Those cases which have held that signalmen were entitled to the work fall in two categories, (1) where the sole activity performed at the site where the shunt was applied and the sole reason for being at the site was the application of a shunt, and (2) where the shunt was used as the sole method of protecting a particular block of track to safeguard other work being done. An example of the first would be where a shunt is applied solely to test the readiness or efficiency of train crews...."

As we have reviewed the facts of this case, they seem to fall directly within the purview of the just-cited language. No awards holding directly to the contrary have been brought to our attention. As a result, we find that the Organization has demonstrated a showing of a violation and the Carrier has not rebutted that showing, either on the merits or through a "de minimis" application. The Claimant would have received overtime had he been called to service and, within the concept of loss of work opportunity, we will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

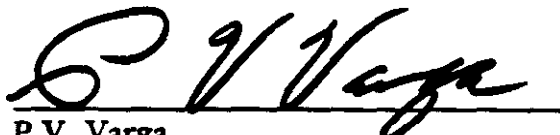
Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.


Carrier Member's Dissent
To
Award 30243 (Docket SG-30876)
(Referee Sickles)

The Board's finding in this case is incorrect and ignores the fact that managerial personnel have a long-standing history of applying track shunts while performing speed checks. The Majority completely disregarded the Organization's burden of proof requirement in this case. The Majority disregarded the fact that speed checks are not tests of the Signal System and that a track shunt simply simulates the movement of a train. The Signal System is not altered in any manner by the placing of a shunt between the rails. The Majority is wrong, in the Carrier's opinion, when it holds that speed checks are a test of the Signal System. Speed Checks are in fact tests that indicate whether train crews are in compliance with Operating Rules; they are not signal tests. Applying a track shunt between the rails performs the same function as if a train is on the tracks. There is no alteration to the signals, in fact, it is a normal function of a track circuit to operate under shunt conditions.

The sole reason that the Carrier's personnel were at the location was not to apply the shunt, but to ensure that train crews were operating within the Rules. This manipulation of the Signal System to perform crew performance checks has historically been performed by non-BRS personnel. We therefore dissent.


P.V. Varga


M.W. Fingerhut


M.C. Lesnik