

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31816
Docket No. SG-32012
96-3-94-3-361**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SP):

Claim on behalf of L.D. Webb for payment of three hours at the time and one-half rate and two and one-half hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed or permitted a management employee to perform train tests with the use of track shunts on April 22 and 29, 1993. Carrier's File No. SIG 93-29. General Chairman's File No. SWGC-653. BRS File Case No. 9372-SP."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee 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 were given due notice of hearing thereon.

In this dispute, we have a claim on behalf of a Signal Maintainer who was regularly assigned to a position scheduled to work from 7:30 A.M. to 4:00 P.M. daily except Saturday, Sunday and holidays. The claim dates in this dispute are Thursdays, April 22 and 29, 1993. The alleged violations occurred "at approximately 11:00 A.M. to 1:30 P.M." on April 22, 1993, and "at approximately 6:15 A.M." on April 29, 1993. The dispute contends, without contradiction, that at these times a Trainmaster, a non-agreement management employee, placed shunt wires across the rails in order to cause the display of a signal aspect which was at variance with the aspect indicated by the actual circumstances. The Trainmaster was in the process of conducting efficiency tests of the train crews operating in the territory of the tests to insure that train movements were being made in compliance with the proper application of the existing Operating Rules. These tests were being conducted in compliance with Federal Railroad Administration (F.R.A.) mandates as well as with Carrier's own internal safety standards and requirements. There is no disagreement between the parties relative to these facts.

Rather, the claim which was initiated and progressed on behalf of the Claimant alleges that the placing of the shunt wires by the Trainmaster in these circumstances violated the provisions of the Signalmen's Scope Rule which reads, in pertinent part, as follows:

"SCOPE

It is hereby agreed by and between the Southern Pacific Transportation Company, and the St. Louis Southwestern Railway Company and the Denver and Rio Grande Western Railroad Company (all hereinafter referred to as the Company) and the employes of the Company represented by the Brotherhood of Railroad Signalmen (hereinafter referred to as the Organization) that:

- I. (a) This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article I, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, including electric indicator lights and supporting masts or poles where such indicators are actuated through track circuits and display aspects governing train or engine movements, signal power lines, pole line signal circuits and their appurtenances, interlocking plants, spring switch locking devices, oil buffers, highway crossing warning devices and their appurtenances, wayside train stop and train control equipment, wheel checkers, detector devices connected with signal systems, including centralized traffic control systems, car retarder systems and hot box detectors and car counting devices when used in connection therewith, dragging equipment detector devices, slide detectors, bonding of rail, annunciators, yard track indicators, switch heaters, electric switch lamps, repair of printed circuit boards (including future replacements which contain solid state design consisting of components technologically equivalent and similar in concept and design to those which are currently an integral part of the Carrier's signal systems) used with equipment specified in Supplement 3, painting of signal equipment and all other work generally recognized as signal work performed in the field or signal shops. In cases where a device is installed serving the same function as a track circuit, the installation and maintenance of such device and circuit shall be considered signal work."

The position of the Organization is singular in nature. It insists that all installation work in connection with track circuits is reserved to employees covered by the Rules Agreement. It argues that the placement of a shunt wire across the rails is an intentional alteration of the track circuit which directly affects the functioning of the signal systems and, therefore, is work which accrues to Signalmen. In support of its position, the Organization cites with favor the decisions reached by this Board in Third Division Awards 11507, 12627, 18374 and 30243 which, it says, have already addressed the specific issue here involved. Therefore, it insists that the conclusions reached therein should be followed in this case.

The Carrier's position is multifaceted. It argues that efficiency tests of train crews are mandated by the F.R.A. and are not subject to any application of the Signalmen's Scope Rule. It contends that the Trainmaster did not perform any tests of the signal systems. Carrier cites with favor the decisions rendered by Third Division Awards 14465 and 15813 which denied a Signalman's claim involving the placement of a shunt wire by other than Signalmen. Carrier further argues that, in any event, the claims as presented were "outrageous" and insisted that, "At most, Claimant would be entitled to compensation for any loss he may have incurred" (underscore in original). It says that because he was fully employed while the Trainmaster was performing the efficiency tests, Claimant incurred no actual loss of work opportunity.

The Board studied with interest the prior decisions which have been referenced in this dispute, especially those outlined in Awards 14465 and 15813. The former Award, which involved these same parties, did not involve a fact situation which is similar to that which exists in this case. That case involved the application of temporary shunts by Maintenance of Way employees while operating a track liner machine. In that case, the Board held as follows:

"The application of temporary shunts was merely an adjunct to the operation of a machine performing maintenance work and the Organization has failed to show through 'tradition, custom and practice' the work involved belonged exclusively to them."

On the other hand, Awards 11507, 12627, 15813 and 30243 each involved a situation in which a management employee placed a shunt wire in the performance of train crew efficiency tests. In Award 11507 we read:

"The remaining issue is whether Carrier's supervisory personnel by applying a temporary shunt, in the course of an efficiency test, which caused Signal 281 to assume its most restrictive indication, violated the Agreement."

There is no question but that the installation of a temporary shunt is work on the signal system circuit and during the time the shunt is in place it is an integral part of the circuit.

It was established, as far back as Award No. 3688, that the installation of a temporary shunt is work generally recognized as Signalmen's. This finding comes with the broader finding that all work on signal line circuits is generally recognized as being encompassed within the contractual phrase 'any other work generally recognized as signal work.'

See, and compare, as examples, Awards Nos. 1501, 3688, 6584, 8069 and 8072.

We will sustain the claim in its entirety."

Awards 12627 and 30243, each of which involved basically the same fact situations, each embraced and reinforced the decision expressed in Award 11507. Award 15813 stands alone in disagreement with the opinion expressed in the aforementioned earlier decisions. Award 15813 made no attempt to distinguish or in any way discount the expressed opinions of 11507 or 12627. Rather, without any other justification or explanation, it held as follows:

"The precise issue in this case, the placing of a shunt wire across the rails, for the purpose of conducting an efficiency test of a train crew, would come within that portion of the Scope Rule commonly referred to as 'the generally recognized' clause, if in fact it comes within the purview of the Agreement at all. This particular clause, being all-inclusive, vague and ambiguous, necessitates that we attempt to ascertain the specific intent of the parties, which can only be determined by examining the past practice, custom and usage on the property. The evidence of record as to the essential point, that is, the placing of the shunt wire for the aforementioned reason, is conflicting. In order for this Board to render a sustaining award in this case, the Petitioner of necessity would have had to present a preponderant body of evidence to demonstrate that the Carrier's official did work that was 'generally recognized as signal work.' We find such probative evidence to be lacking and will accordingly deny the claim."

After Award 15813 was issued, the Board again examined the placing of shunts by other than Signalmen and in Award 18384, after examining the overall issues involved, ruled as follows:

"There have been numerous decisions of this Board in the past several years dealing with the application of Signalmen's Scope Rule to the task of controlling signals by shunting the track circuit, and, indeed, these past cases are divided between those which sustain and those which deny prior claims to the work. These cases are not hopelessly split and inconsistent, however. There is a pattern to these cases which delineates distinctly and logically between the circumstances under which the Signalmen's Scope Rule will be held to include the work of applying a shunt to the track circuit and those which will be considered beyond the intended coverage of the rule.

Cases which have held that Signalmen were not entitled to the work of applying a temporary shunt involve situations where the primary instrumentality of effecting the 'short circuit' is equipment which operates on the rails. Where maintenance crews operate equipment such as cribbing machines, tamping machines, track liners and the like, the equipment itself actuates the signals in the same manner that a train would do. Shunts are ordinarily used as a back-up in those cases or to provide intermittent protection while the equipment is being repositioned or removed.

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 the 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. An example of the second would be where maintenance crews working on the line had no equipment which operated on the rails or had rail equipment not designed to reliably conduct current between the rails."

As recently as 1994, the Board in Award 30243 again reviewed the conclusions reached in Awards 11507, 12627, et al, and found no basis on which to reach a contrary opinion leaving Award 15813 to continue to stand alone in its conclusions. The Board in this case finds no reason to disagree with the logic expressed in Award 11507 and its progeny.

Carrier's argument relative to the efficiency tests being mandated by the F.R.A. is neither significant nor convincing in our determinations on this case. Such a mandate is not a license to ignore or otherwise violate the negotiated Agreement. The mandate can very well be met by compliance with the Agreement. Therefore, that argument is rejected. Carrier's further contention that the Trainmaster did not, in fact, make an actual test of the track circuits begs the real issue here which was the placement of the shunt wires which, for his purposes, altered the signal system display. That contention too is rejected.

As for the remedy sought, the record clearly shows that on April 22 there was no actual loss of work opportunity suffered by the Claimant inasmuch as he was on duty and under pay at the time of the disputed work. The same situation is not found on the April 29 claim date. There the disputed work occurred at a time when Claimant was not on duty. On the basis of the conclusions reached in the several Awards previously cited, Claimant did, in fact, suffer a loss of work opportunity for which he is entitled to be compensated. The fact that Claimant was compensated for other overtime work on April 29 does not mitigate his loss of work opportunity which occurred "at approximately 6:15 A.M." on that date. That portion of the claim is sustained.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 1996.