Award No. 893
Docket No. SG-821

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "Claim that J. T. Harrison and H. M. Nichols, furloughed signal helpers, shall be compensated at the Helper's rate of pay for all time Track Laborers Calvin Beal and Everett Cheeks assisted signal employes bond track since March, 1938."

EMPLOYES' STATEMENT OF FACTS: "During the early part of March, 1938, a small signal gang was assigned to the following of a rail change gang between Hempstead and Eureka, Texas. The duties of this gang included the **bonding** of the rail, which is used to carry the current in connection with the operation of the automatic block signals, and otherwise connecting the newly installed rails to the signal system.

"The process of bonding the rail consists of drilling one or two holes through the web of the rail with a specially designed signal bond drill and plugging in a pin-type bond.

"The signal crew assigned to this job consisted of O. Lisman, signalman, and C. J. Brown, helper.

"Calvin Beal and Everett Cheeks, Negro track laborers who were carried on extra gang Track Foreman J. H. Gibson's time rolls, were used to do the drilling of the rails for the signal bonding.

"J. T. Harrison and H. M. Nichols, signal helpers, were furloughed account of force reduction January 10, 1938, and December 26, 1937, respectively. They had both kept their names and addresses filed with the proper official of the railroad company as required in the agreement. In fact, they had each personally called upon the Signal Supervisor several times subsequent to being furloughed and prior to the completion of the job in dispute regarding being recalled to service."

POSITION OF EMPLOYES: "That J. T. Harrison and H. M. Nichols shall be compensated at the helper's rate of pay for all time track laborers Calvin Beal and Everett Cheeks assisted signal employes bond track since March, 1938, and base their contention on the Signalmen's agreement, effective as of May 1, 1924.

"Particular reference is made to the following:

'SCOPE—These rules shall apply to employes classified in Article I, performing the work generally recognized as signal work.'

'Article I, Section 5.—A man assigned to assist other employes specified herein shall be classified as a signal helper. A signal helper

"There is no rule in the agreement to support the contention of the Organization and as neither former Signal Helpers Harrison or Nichols performed work for which the general chairman of the Organization is attempting to claim time, the rule provides that no compensation should be allowed. The rule that no compensation will be allowed for work not performed, except as provided in the rules, was considered just and reasonable by the Labor Board when it rendered Decision No. 707 on February 13, 1922. The same principle should have as much force and effect now. There was no work performed by former Signal Helpers Harrison and Nichols, nor was there any work done by other employes that should be performed by Signal Department employes.

"**CONCLUSION:** The carrier has definitely shown that the contention of the Organization is not supported by rule or practice. It has demonstrated beyond controversy that this case is brought in an effort to secure a new rule in the guise of an interpretation of a rule that has been in effect ever since the signalmen's agreement took effect on these lines, May 1, 1924, and which has consistently been construed and applied in the same manner, and by this device change the application of the rule and existing practices.

"It is affirmatively stated that all of the documentary evidence introduced herein has been presented to the General Chairman.

"As the Carrier has not seen or been furnished with a copy of the Organization's ex parte submission, and as it has not been notified of any documentary evidence which the organization might attempt to use to support its contention, it is not in position to anicipate the contentions that will be made or attempt to answer those contentions at this time. Every effort has been exerted to state all of the facts and to present documentary evidence in exhibit form, but as it is not known what the organization will present it is requested that an opportunity be afforded the carrier, after being furnished with a copy of the Organization's ex parte submission, to make such written answer thereto as may be deemed necessary or proper.

"The Carrier respectfully requests an oral hearing, first, on the question of jurisdiction and if over ruled in its position on that point, thereafter on the merits of the case.

"Wherefore, premises considered, the Carrier respectfully requests, first, that the case be dismissed for lack of jurisdiction, and if considered on the merits, second, that it be in all things denied."

There is in existence an agreement between the parties bearing effective date of May 1st, 1924.

OPINION OF BOARD: The controlling issue in this case is fundamental and goes to the very heart of the agreement between the parties. The question is whether the drilling of holes in the rails for signal bond wires is "Signal Work" under the prevailing agreement. The scope rule reads as follows:

> "These rules apply to employes classified in Article I, performing the work generally recognized as signal work."

Article I then proceeds to state the different classifications of employes from Gang Foreman to Signal Helper but does not specify the duties of the employes in the separate classifications except as hereinafter noted. And nowhere in the Agreement is there to be found a definition or description of "work generally recognized as signal work."

Both parties fell into error in perfecting the record in this case; Petitioner erred in assuming that the work in question is "generally recognized as signal work"; Carrier erred in assuming that, because it had never so recognized the work, it is not covered by the scope rule of the Agreement.

In support of its contention, Petitioner relies upon the definition of the duties of a signal helper which are defined as follows:

> "HELPER. Sec. 5. A man assigned to assist other employes specified herein shall be classified as a signal helper. A signal helper when working alone, or two or more signal helpers working together, may perform such work as filling and cleaning lamps, cleaning and oiling interlocking plants, bonding track, renewing primary batteries, excavating, and handling material, but shall not be permitted to do work recognized as distinctively maintainers' or signalmen's work." (Underscoring supplied)

Petitioner also relies upon the unsupported but undenied statement in the record that on other railroads generally the drilling of holes in rails for signal bonding is performed by employes covered by the Signalmen's agreements.

In support of its contention, Carrier relies upon instances both before and since the effective date of the Signalmen's Agreement on its property where signal employes were not used to drill holes in rails for bonding track, where the drilling was done in advance of the rail being placed in the track. The record is in conflict as to whether this practice has been uniform but for reasons stated below this is immaterial.

As to the contention made by Petitioner, the Board holds that the record does not satisfactorily show and the Board is unwilling to assume that the work of drilling holes in rails for signal bond wires is "work generally recognized as signal work." The failure to define "signal work" in the Scope rule makes it necessary to submit proof as to whether the work in question is signal work when that fact is in dispute. Under the broad language of the scope rule the general practice, whatever that may be, will govern.

Petitioner contends that the reference in Section 5 of the agreement to "bonding track" as part of the work that may be performed by a signal helper is conclusive evidence that the work in question is signal work. While the parties agree that the holes are drilled in the rails exclusively for bonding purposes, this in itself is not sufficient evidence to warrant the conclusion that the work of drilling the holes in rails before they are placed in the track is signal work. This work was performed by Maintenance of Way employes and, while the record does not contain even a suggestion that this is a jurisdictional dispute, some showing should be made on the record either that the Maintenance of Way employes make no claim to the work under their agreement or that the work is generally performed by signal employes.

The record contains no evidence upon which a valid conclusion may be based that the work is "generally recognized as signal work."

Carrier's contention, that the long continued practice, known to both parties, of using laborers to drill holes in rails for signal bond wires on the property of the Carrier establishes a mutual understanding as to the meaning of the scope rule of the agreement which must be respected by this Board, is not applicable in this case. This Board has held in numerous awards that long continued practices are valuable only in cases of doubtful meaning of words used in agreements. There is no doubt as to the meaning of the words used in the scope rule of the agreement. The inability of the Board to make final disposition of the case arises from a deficiency in the record—a failure to show that the work in question is "generally recognized as signal work."

The prevailing agreement in this case is between the several Southern Pacific Lines in Texas and Louisiana and the Brotherhood of Railroad Signalmen of America and this Board is charged with notice that the Brotherhood is a national organization and a party to similar agreements with many Class

I railroads in the United States. Therefore, the general language of the scope rule found in this agreement cannot be restricted to the practice that prevailed on this Carrier when the agreement was made. The craft had been too long and well established when the agreement in question was executed to permit of such narrow interpretation; moreover such an interpretation would lead to endless and hopeless confusion.

The claim in this case was filed by the Brotherhood in the name of two furloughed employes. Carrier contends as a secondary defense that the employes in question were not entitled to the work even should it be found that the work in question is covered by the agreement and that the claim should be denied on this ground. In the opinion of the Board, this question is immaterial to the main question in dispute. The claim for the right of signal employes to do the work was seasonably filed and, if it should be finally determined that the work in question is covered by the agreement, Carrier will suffer whatever the penalty is for the violation of the agreement. The only concern of Carrier under such circumstances is to see to it that the penalty is paid to the employe or employes entitled thereto. The fact that the claim was filed in the name of two furloughed employes who may not have been entitled to the work is not material where the main question in dispute is properly presented as it is in this case.

In view of the deficiency in the record, the case will be remanded to the parties to jointly or severally develop the necessary additional facts and make further effort to effect a settlement of the dispute without prejudice to the rights of the parties, or either of them, to resubmit the same in the event they are unable to do so.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 dispute should be remanded to the parties to jointly or severally develop the facts and make further effort to dispose of the case.

AWARD

Claim remanded in accordance with above opinion without prejudice to the rights of the parties, or either of them, to resubmit the dispute if not disposed of by them.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.