

Award No. 1113

Docket No. SG-1124

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

THE PENNSYLVANIA RAILROAD

STATEMENT OF CLAIM: "Claim of Harry Flohr, signal maintainer, first track, Acre Block Station, Ohio, for 7½ hours pay at time and one-half rate, Sunday, January 10, 1937."

EMPLOYEES' STATEMENT OF FACTS: "On Sunday, January 10, 1937, twenty-one stored freight cars were moved from the siding at New Alexandria, Ohio, which is part of the territory assigned to and maintained by Maintainer Flohr. There is only one switch at this siding, which switch is at the West End, about one mile west of New Alexandria. This siding has only been used for the last several years as a storage track, and therefore has the main track switch spiked. The machine which operates the switch is the type installed and maintained by signal department employes and accordingly the maintainer in charge of that section is responsible for its proper function and operation. The track circuit shunt wires, which break through the switch machine, the fouling circuit, track circuit, and other protecting devices assigned to the signal department, were maintained in service.

"In order to get cars off this siding, it is necessary to pull the spikes remove the block from the switch that it might be operated, make necessary tests and see to it that all the apparatus was safe to be used and the switching moves protected. Signal Maintainer Flohr, or in his absence another Telegraph and Signal Department employe, has always prior to the occasion of this claim performed the signal work required at this switch and has likewise performed this service subsequent to the occasion of this claim.

"On the date in question the track foreman was used to perform the work instead of Maintainer Flohr. The track foreman was used for 7½ hours, the amount of time claimed in behalf of Mr. Flohr."

POSITION OF EMPLOYEES: "Maintainer Flohr is the regular assigned maintainer and is held responsible for the efficient operation of all signal apparatus on that part of the territory embraced in this claim. He is responsible for the safe and proper performance of all equipment assigned to his care; accordingly, he is held subject to call on all hours off duty (unless he has otherwise arranged) to take care of any emergency and to be at the disposal of the Carrier for any extra work, or other desires of those in charge.

"Article I of the current Agreement is particularly relied upon by the employes in support of this claim:

There is in existence an agreement between the parties bearing effective date of July 1, 1928, as to Regulations and March 16, 1927, as to Rates of Pay.

OPINION OF BOARD: Whether the carrier rightly assigned the work appearing in the submission to a track foreman rather than to an available signal maintainer, the circumstances of the record considered, is the question.

We think the rules quoted or otherwise sufficiently appearing in the record, indicate that responsibility for performance of the service involved rested generally with the personnel activity of the carrier known as the signal department employes, and particularly upon signal maintainer Flohr, in whose assigned territory the required task was done, and who was subject to call. Not only do the rules reasonably construed, lead to the conclusion we have suggested, but it appears that throughout the years prior to the incident presented the carrier always had called upon a signal department employe to perform the duty which here it assigned to a track foreman. The course of action by the parties may well be regarded as contemporaneous construction, not a little persuasive in controversies of the nature here.

We are not impressed with the view advanced by the carrier that it was privileged to assign the work to a trackman or a signalman at its election. The rules so emphasize the responsibility of the signal department employes in the premises as to preclude that thought. See Award 565.

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 carrier violated the agreement by its failure to call claimant Flohr for the service in question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1940.

DISSENT TO AWARD NO. 1113, DOCKET NO. SG-1124

The only work here required, actually done as disclosed by the record, and made subject of claim was the unspiking and, after removal of cars, the spiking of a switch. The only further allegation of the petitioners made to connect that work with signalmen's work was that at this siding that work required the person who performed it to make certain tests and observations of the signal apparatus, but the record stands with unimpeached evidence that all necessary tests and observations of the signal apparatus were made a week previously in accordance with standard maintenance schedules and instructions, and that Track Foreman Yager who unspiked and spiked the switch on the day in question performed no work on the signal apparatus connected with the switch.

The job of unspiking and spiking a switch in the simple way here done, i. e., using a wood block fastened by a lag screw between main rail and one switch point and driving a spike in each of two ties to hold the opposite switch point, just naturally is the work of a trackman, and among railroad men automatically is accepted as such without thought or question, and probably nearly as generally so understood by the public who had opportunity to observe or occasion to consider the work at all. In this record the general practice is declared to be such and this is not contested except as to the practice at this one switch, which is but one of the many hundreds that exist on the lines of this carrier. The record similarly is specific that, other than the time of traveling to and from the location, the waiting time, or other trackmen's tasks performed, the actual time taken to unspike the switch is about 2 minutes and to spike it about 2 to 3 minutes. Track Foreman Yager's testimony to that effect is not challenged.

It is equally as well known that the switch machine for operation of a switch of this kind is so designed as to admit of its operation at other and divers times by train men in connection with their switching movements when customarily and usually neither trackmen nor signalmen are about, and that such operation at any and all times, unsupervised by signalmen or trackmen, is made sure and secure by the normal standard maintenance instructions in conformance with which trackmen and signalmen at other and stated periods conduct their observations, tests and work. The operation of this switch, including its unspiking and spiking as on the day in question, does not affect the working parts of the switch or the signal apparatus. The evidence of that fact in the record stands unrefuted, as of course it must if safe and assured operation of the railroad could at all continue.

With the background of such well-known and indisputable facts confirmed by the record in this case showing that work of the character here involved is preponderatingly done by trackmen, and also as occasion warrants by signalmen, it would be a travesty on justice to accept the opinion of this award to apply to the general performance of such work. The opinion, in practical wording, states that the rules indicate that responsibility for performance of the service rested with the signalmen, and particularly upon signal maintainer Flohr. The further statements in the Opinion limited (as indeed it was suggested) this award to the circumstance of this particular case. But what an anomaly and commentary on the function of this Board it is to declare that signalmen by the rules have the responsibility for unspiking and spiking a switch at one location when under the same rules switches may be unspiked and spiked at hundreds of other locations by trackmen!

The error in such an award and the heresy of it, if there was intention to extend it to a single other situation, makes it necessary to render this dissent to insure that the generality of phrasing and the indefinite restriction to this one case in the wording used be not misapprehended as guidance to others to advance or accept it as a declaration that unspiking and spiking of a switch is exclusively a signalman's job.

S/ R. F. RAY

S/ C. P. DUGAN

S/ A. H. JONES

S/ R. H. ALLISON

S/ C. C. COOK