

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement in effect between itself and the Brotherhood of Maintenance of Way Employees by assigning a Yardmaster to make repairs to Number 18 switch, south end 47th Street Yard;

(2) That Cyril Anderson be paid for a call two (2) hours and forty (40) minutes at time and one-half rate in accordance with the provisions of Schedule Rule 31, on December 23, 1946.

EMPLOYES' STATEMENT OF FACTS: At approximately midnight on December 23, 1946, a yard crew in charge of Conductor Watson ran through Number 18 switch at 47th Street Yard, damaging the switch rods in such a manner that the switch could not be operated. Yardmaster Scott secured tools from a section gang's tool shed which was located near the Yardmaster's office and which the section foreman had, in accordance with instructions, left unlocked. By straightening the rods, it was possible to continue using the switch, even though it was not adjusted properly.

When Foreman Anderson reported for duty, he noticed that Number 18 switch was not properly adjusted, and upon inspection, found that the rods had been bent and straightened to some degree, and that the tools that had been used, namely, claw bar, spiking hammer, etc., were still laying near the switch stand. Foreman Anderson then proceeded to properly repair and adjust the switch.

Foreman Cyril Anderson is in charge of that section of railroad comprising 47th Street Yard.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope Rule of the effective agreement provides as follows:

"Scope

These rules govern the rates of pay, hours of service and working conditions of all employees in the track sub-department and bridge and building sub-department of the Maintenance of Way and Structures Department listed in Rule 1 of this agreement, and other employees performing similar work recognized as belonging to and coming under the jurisdiction of the track and bridge and building sub-departments of the Maintenance of Way and Struc-

duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis."

POSITION OF CARRIER: The alleged claim set up in the Committee's ex parte Statement of Claim is without foundation under the rules of the Agreement effective June 1, 1940, as amended, covering employes represented by the Brotherhood of Maintenance of Way Employes.

The service performed by Yardmaster Scott in repairing No. 18 track switch was not in violation of the aforementioned agreement.

Section Foreman Anderson was not notified or called to perform work not continuous with his regular work period on December 23, 1946 for the purpose of making repairs to No. 18 track switch and, therefore, is not entitled to compensation under the provisions of Rule 31 of the Agreement effective June 1, 1940, as modified by the Memorandum of Agreement effective December 16, 1944.

Attention is directed to the fact that 47th Street Yard is an important and busy train yard, where manifest freight trains arriving at Chicago are broken up by yard crews, and the cars arriving in such trains are delivered from that yard to proper connection, freight house, team track or industry by yard crews.

Manifest freight trains operated out of Chicago are made up at 47th Street and the cars dispatched in such trains are assembled in that yard.

From 10 to 15 manifest freight trains arrive or depart from 47th Street Yard daily and from 15 to 20 yard crews are employed in that yard during each 24-hour period.

When consideration is given to these facts, it is obvious that, in order to take care of the requirements of the service, it was necessary for No. 18 track switch to be repaired at the earliest possible moment; and, in that connection, attention is directed to the fact that it has always been the practice for employes in the Transportation Department engaged in the operation or handling of trains, yard engines, etc. to make necessary repairs to damaged facilities, when practicable, under circumstances such as surrounded this case, in order to expedite the movement of traffic; and the Agreement effective June 1, 1940 covering Maintenance of Way Department employes does not, in any way, restrict the right of the Carrier to permit employes engaged in the operation of trains, yard engines, etc. to perform service such as performed by Yardmaster Scott on December 23, 1946, and that fact has heretofore been recognized by the representatives of the employes, as the alleged claim of Section Foreman Anderson is the first claim of that character which has ever been called to the attention of the Carrier.

There is no rule in the Agreement covering Maintenance of Way Department employes which provides compensation for such employes when not called to perform service outside of their regular working hours; and there is no rule in that Agreement obligating the Carrier to call Maintenance of Way Department employes for service outside of their regular working hours.

Therefore, it is apparent that the alleged claim set up in the Committee's ex parte Statement of Claim involves a request for a new rule. As the granting of new rules is a power which the Board does not possess under the law by which it was created, it is obvious that the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: The System Committee claims the Carrier violated their agreement by assigning a Yardmaster to make repairs to Number 18 switch, south end 47th Street Yards. It asks that Cyril Anderson be paid for a call under Rule 31.

The record establishes that about 1:45 A. M. on December 23, 1946 a yard crew ran through the switch at the south end of Track No. 18 in the

47th Street Yards. It damaged the switch rods thereof so that the switch could not be properly operated. Yardmaster Scott, an employe then on duty but who was not covered by the parties' agreement, secured tools from the section gang's tool shed, which was located near his office, and straightened the bent rods in the switch so as to make it work, although he did not properly repair and adjust it. When Section Foreman Anderson reported for duty he noticed the condition of the switch and properly repaired it.

Rule 31 of the parties' agreement provides:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half for two (2) hours and forty (40) minutes or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis."

The situation here involved is like that in Award 3690. The work done by the Yardmaster had the effect of repairing the switch, although temporary in nature. Therein we said:

"* * * We can see no distinguishing difference in the nature of the repair, whether temporary or permanent, except the extent or degree thereof. Both are intended to and do place the switch back in operation and require the necessary skill to perform that service. There are other ways in which a switch that has been 'run through' can be handled but when it is repaired, either temporary or permanent, the work required to do so comes within the scope of the Maintenance of Way Employes' agreement and the work must be done by them."

We think that holding applicable to the situation here.

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 has violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.