

Award No. 5428

Docket No. SG-5343

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad:

(a) That placing of a shunt on a track circuit constitutes signal work coming within the Scope of the Signalmen's Agreement dated June 1, 1944, and should be performed by Signal Department employes.

(b) That Wade Ralph be paid sixteen hours at straight-time pay at the Signal Maintainer's rate for April 1, 1948, and for each day thereafter that persons not covered by the Signalmen's Agreement were permitted to perform signal work as indicated in claim (a).

EMPLOYES' STATEMENT OF FACTS: A track shunt, in general sense, consists of a piece of heavy wire (usually insulated and flexible) with a screw clamp soldered or welded to each end of the wire. When applied as a shunt, one clamp is attached to the base of one running track rail and the other clamp is attached to the base of the other running rail, placing a shunt on the track circuit, causing the track relay to open when the shunt is properly applied. The opening of the track relay in turn causes the signal protecting that particular piece of running track to indicate that a train or other obstruction is in the block which is governed by the signal. This condition is effectuated by the temporary track circuit shunt disrupting (shorting-shunting) the flow of the track circuit. It is necessary to make meter tests or inspect the signal's indication to definitely determine that a temporary shunt has been properly applied. Such tests and inspections are an important part of signal work as comprehended and covered by the Scope rule.

Chapter VII (revised in 1948) of the American Railway Signaling Principles and Practices furnishes the following description of a track circuit:

"Non-Coded Direct Current Track Circuits

The Signal Section, Association of American Railroads, defines Track Circuit as: An electrical circuit of which the rails of the track form a part.

The track circuit is the most important link in the signal system. It is the medium of connection between the moving train and the signal or other device provided for its protection.

the letter of May 20, 1948 and said that he could not grant the request to pay Committeeman Ralph 16 hours at pro rata pay each day or to advertise a maintainer's position.

This claim is thereafter progressed through the usual channels and it was denied on the basis that:

(A) A qualified flagman from the ranks of the trainmen was assigned and had the responsibility to protect the cribbing machine when it was in use as an on-track M. of W. machine and no signalman was needed.

(B) That if a shunt was used in connection with operation of the machine it was simply an extra precaution and the use of such shunt was simply a substitute for other devices that have been used throughout the years by M. of W. employes for their own protection.

(C) That the use of a shunt in such circumstances was not in violation of the Agreement covering Signalmen and that the classification of signalmen did not prevent the use of a shunt by M. of W. forces in the same manner that they would use other devices throughout the years that these machines have been operated.

For your Board to support a claim of this character would result in many thousands of dollars of unjustified payments to employes who did not work or to employes who were not needed in connection with the operation.

(Exhibit not reproduced.)

OPINION OF BOARD: The question presented by this submission is whether or not the placing of a temporary shunt on a track circuit while a cribbing machine is being removed from the tracks constitutes signal work falling within the scope of the Signal Department Employes' Agreement of June 1, 1944, and to be performed exclusively by employes of such class. The work was done upon this property by Maintenance of Way employes.

The Scope Rule in the Agreement before us reads:

"This agreement covers rates of pay, hours of service and working conditions of all employes specified in Article 1 **engaged in the installation and maintenance of signal apparatus and performing work generally recognized as signal work.**" (Emphasis added.)

See also Rule 4.

The act complained of clearly does not fall within the scope of the first emphasized phrase. True, "maintenance" contemplates the proper functioning of the signals as stated in Award No. 3688, but when considered in connection with the use of a lining bar or some other device or a shunt of their own design long applied by non-skilled employes on this line, we are not impressed with the contention of the intricacies involved in its proper application and interference with the proper functioning of the signal system. In interpreting the general language contained in the second emphasized phrase, we must resort to custom and practice to ascertain if the work in question has been generally recognized as signal work. In Award No. 3688, with Referee Wenke assisting, we upheld the position of the Signalmen on the New York Division of the Pennsylvania Railroad. In evidence in that submission, however, were special instructions and several circular letters issued earlier by the Carrier wherein "the qualified employe" mentioned therein as the party to do such work was also identified as a signalman, supporting the contention that it had been considered their work on the New York Division of that road by the Carrier. Further, that case involved electrified territory and a widespread use of shunting appeared necessary on that road, particularly in connection with the renewal of rails. In this connection there is an alleged danger to employes from electric shock and

affect upon normal operations of the signal system if a shunt is not applied, and properly so, when renewing rails. In the instant case the shunt was used simply as an extra safety precaution; the principal burden of protecting the tracks during the operation in question rested upon the flagman. If this was not so, meter testing after the application of the shunt would undoubtedly be necessary and the skill of a signalman might well be required in connection with the use thereof. But no such meter is used on this property.

Unlike the submission subject of Award No. 3688, there is no showing here that signalmen have ever been used on track machine service. The work of shunting has long been done by Maintenance of Way employes on this road. If the custom and practice were to be changed, opportunity to do so came with the negotiation of the present Signalmen's Agreement in 1944.

Normally the cribbing machine runs to the nearest siding upon the approach of a train, or where a crossover is available, moves to the opposite track. A setoff is infrequently required and allegedly can be accomplished in five minutes. It is shown by the record that the shunt is used only during this setoff period because at other times the weight of the cribbing machine is such that it actuates the signals. Statements of employes submitted in the record indicate that on this Division, and in connection with this cribbing machine, the shunt was required only a few times during the working season. The facts here differ materially from those present in Award No. 3688.

We cannot say from the record before us that through tradition, custom and practice the work in question belongs exclusively to Signalmen.

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 Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1951.