

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY**

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

Claim of B. K. Hartzler, T. & T. Maintainer for 2½ hours at the overtime rate by reason T. & S. Maintainer at Westward Enola Retarder Hump making repairs to telephone circuit on a day that T. & T. work was not a part of any assignment in the Enola area, April 5, 1952.

EMPLOYEES' STATEMENT OF FACTS: The claimant, T. & S. Maintainer B. K. Hartzler, on the date of this claim was regularly assigned on a maintenance territory Day to Banks, Pa., 7:00 A. M. to 3:30 P. M., with one-half hour off in this period for lunch, Monday through Friday. No other employe was regularly assigned to work on his territory outside of his regular assigned working days, or on his rest days of Saturday and Sunday.

About 2:00 A. M., Saturday, April 5, 1952, a train derailment occurred on the claimant's maintenance territory and damaged a wayside telephone, the maintenance of which was assigned to the claimant, and it was his duty to keep this telephone in working order.

About 12:30 P. M., Saturday, April 5, 1952, ten and one-half hours following the train derailment, a T. & S. Maintainer from a contiguous territory was used by the Carrier to repair the damaged telephone and restore it to normal service. On Monday, April 7, 1952, the claimant completed the repairs and restored it to its normal condition.

The claimant's and the adjacent maintenance territories are separate and distinct maintenance territories, and each covers separate and distinct areas on the property, as evidenced by excerpts from bulletins advertising vacancies.

The claimant's maintenance territory is described and identified as follows in two bulletins:

"The Pennsylvania Railroad
Eastern Region
Philadelphia Division.

Harrisburg, Pa. May 15, 1945
File A—Bulletin No. 493

* * * * *

"The following positions are hereby advertised for bids in accordance with Telegraph and Signal employees agreement

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OPINION OF BOARD: In conformity with applicable provisions of the parties' Agreement covering the usual manner of handling controversial matters the Board is here assisted by the submission of a Joint State of Agreed-Upon Facts together with positions of employees and company. This action by the parties summarily disposes of company's objection, that it had not received due and proper notice of the claim, to the jurisdiction of the Board. Further, the company's brief on page 2 thereof admits that "the claim was handled in the usual manner on the property."

The Agreed-Upon Facts being brief are hereinafter set forth in full:

"The claimant B. K. Hartzler on the date of the claim was regularly assigned as T. & S. Maintainer, headquarters Enola; territory. Day to Banks inclusive including communication equipment; tour of duty, 7:00 A.M. to 3:30 P.M. with one-half hour meal period; rest days, Saturday and Sunday. No relief Maintainer assignment was provided to cover the rest days.

"Another assignment of T. & S. Maintainer was in existence with headquarters at the Westbound Hump Enola; territory, Westbound Hump and associated equipment; tour of duty, 7:00 A.M. to 3:00 P.M.; rest days, Sunday and Monday. Rest days of this assignment were covered by a relief Maintainer assignment.

"During the night of Friday-Saturday, April 4-5, 1952, a derailment resulted in damage to a telephone box located at the West End of the Westbound Classification Yard Enola, placing the telephone in this box out of service.

"During the tour of duty of the Maintainer with headquarters at the Westbound Hump on Saturday, April 5th, this Maintainer was required to make temporary repairs to the telephone box and restore the telephone to service. On Monday, April 7, 1952, the claimant was required to make permanent repairs to this telephone box."

Employees contend that claimant was the regular assigned Telephone Maintainer (although his bulletined assignment was T. & S. Maintainer) in the area where the derailment occurred and repairs were made; that all communications both wayside and office were not part of any assignment in the Enola area on the day and time in question; that no other employee was assigned to work on his territory on his rest days; that the T. & S. Maintainer used by the company was from a contiguous territory; and that the aforesaid constituted a violation of Article 2, Section 23 (H), which reads:

"**WORK ON UNASSIGNED DAYS** (h) (Effective September 1, 1949) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

The company contends that the T. & S. Maintainer who made the repairs is assigned to territory within the territory included in the assignment of the claimant; that the repair work performed could be properly included in his assignment, within his assigned territory and during his regular tour of duty. The company also asserts that the repairs were of an emergency nature but does not press the point preferring to rest on the broader ground that the claimant did not have an exclusive right to the work in question.

From the Joint Statement of Agreed-Upon Facts and other relevant information contained in the record we find no difficulty in holding that the T. & S. Maintainer used by the company to make the temporary repairs was located within the territory included in the assignment of the claimant

and the work required could properly be included in his assignment and in the territory covered by his assignment, during his regular tour of duty, thereby not infringing on the rights of claimant who was on his rest day at the time the work was performed. His bulletined assignment as a T. & S. Maintainer was at Westbound Hump which is within the Westbound Classification Yard Enola where the work was performed. The employees do not sustain their position that claimant and the T. & S. Maintainer occupied separate and distinct areas on the property. In fact in the employees' rebuttal statement while pressing their argument that this docket involved two well defined assignments they admit there may be some geographical overlapping.

The employees place great reliance on the principles enunciated in Award 5804. There, however, were two separate and distinct territories which at no point overlapped, unlike the instant case. There the Division held that the "work on an unassigned day" rule was violated when a signal maintainer from one assigned territory was used to correct signal trouble on a different assigned territory when the signal maintainer on the latter territory was on his rest day, was available and that there was no unassigned employee available who had not worked 40 hours in that week. We agree with that principle but find it inapplicable here.

The employees contend that the claimant was a T. & T. Maintainer, although the position advertised and for which he successfully bid, is described as "T. & S. Maintainer."

The Scope Rule of the Agreement refers to "the classifications herein set forth" and "Article 1—Classifications, Section 3 thereof reads as follows:

"Signal Maintainer Telegraph and Signal Maintainer Telegraph and Telephone Maintainer Signalman		An employee qualified and assigned to perform the work of a mechanic in the Telegraph and Signal Department.
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Whenever reference is made in this Agreement to the position of 'maintainer,' the term shall be construed to refer to the positions of signal maintainer, telegraph and signal maintainer, and telegraph and telephone maintainer. The term 'mechanic' where used in this Agreement shall be understood to refer to the positions defined in this Section."

It is obvious that a T. & S Maintainer or a T. & T. Maintainer is an employee qualified and assigned to perform the work of a mechanic in the Telegraph and Signal Department.

Article 4—Seniority and Assignment to Positions—reads in pertinent part as follows:

"(Effective August 1, 1950) The following groups of employees shall each constitute a separate seniority class:

- (a) * * *
- (b) * * *
- (c) * * *
- (d) Signal Maintainers, Telegraph and Signal Maintainers, Telegraph and Telephone Maintainers, Signalmen.
- (e) * * *
- (f) * * **

It seems clear to us that under the circumstances present here the applicable provisions of the Agreement cited permitted, rather than proscribed, the assignment for claimant could not be held to enjoy an exclusive right to the work in question. No basis for an affirmative award exists.

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 Employee involved in this dispute are respectively Carrier and Employee 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1956.