

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated Article II, Section 11 (a), of the Agreement effective February 1, 1946, when it called Track Supervisor Winfrey for signal trouble instead of calling Signal Maintainer E. H. Haubensak on whose assigned territory the signal trouble existed and who was being held subject to call for the purpose of covering all signal failures in accordance with the provisions of Article II, Section 11 (a), of the Agreement.

(b) Signal Maintainer E. H. Haubensak be compensated at his pro rata rate of pay for a minimum call of four (4) hours.

EMPLOYEE'S STATEMENT OF FACTS: On January 20, 1953, at about 5:00 P. M., signal 7192, which is located on a part of the claimant's assigned territory, failed to clear after a train passed through the spring switch at Acquia, Colorado. The operator at Littleton, Colorado, called the track supervisor for the signal work. The track supervisor, realizing that the signal maintainer was subject to call and that it was work of his assignment, so advised the operator and asked that he call the Signal Maintainer for the work. The dispatcher of the Carrier advised the track supervisor to go out and see if he could locate the signal trouble. The track supervisor did as he was instructed and cleared the signal trouble.

This claim was handled in the proper and usual manner on the property, up to and including the highest officer of the Carrier designated by the Management to whom appeals may be taken, without securing a satisfactory settlement.

There is an Agreement between the parties involved in this dispute between the Brotherhood of Railroad Signalmen of America and the Atchison, Topeka and Santa Fe Railway Company bearing the effective date of February 1, 1946. We understand there is a copy of this Agreement on file with the Board, and request is made that it be made a part of the record in this dispute.

THIRD: Neither Article II, Section 11-(a) nor any other rule of the Signalmen's Agreement required the calling of the Signal Maintainer under the circumstances that existed.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and arguments as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs presented by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Appearing in the docket of this case is copy of a resolution bearing upon the third party notice issue, presented by Carrier Members to this Board October 21, 1955. The resolution failed of adoption.

The issue was not raised while the dispute was being handled on the property, nor was it argued before the Referee. We, therefore, hold the issue is not properly before us now and shall forthwith proceed to dispose of this case on its merits. Award 7785.

Carrier describes the circumstances leading up to the instant claim as follows:

One of Carrier's trains left a siding on January 20, 1953. As it left, Conductor Robbins noticed the signal protecting the spring switch at the north end of the siding failed to clear. He stopped the train and investigated to see whether or not the switch points had properly relined. Finding they had not, he attempted to reline the switch manually, but found it required the combined efforts of himself and a brakeman to do so. He reported the situation to the train dispatcher by telephone.

The train dispatcher had the telegraph operator call Track Supervisor Winfrey to investigate the difficulty, and on investigation the Track Supervisor found that a stray bolt, apparently lost from a passing train, had lodged between the switch point and stock rail, preventing proper closing of the switch points. The switch circuit controller, which checks proper position of the switch points and controls the signal, was thereby held open, causing the signal to remain in stop position. Promptly upon removal of the stray bolt the switch points properly lined and the signal immediately cleared.

It is argued on behalf of the Organization that when such incident occurred, Carrier should have suspected the Spring Switch Mechanism as the source of the trouble, and, in its view, because Signalmen have the rights to this piece of equipment, Carrier should have called Signal Maintainer Haubensak, instead of the Track Supervisor; that the first indication to the Conductor that something was wrong was when he noticed the signal failed to clear.

The Organization further states:

"The Carrier failed to show in its Statement of Facts that upon being called by the operator Track Supervisor Winfrey informed the operator that Signal Maintainer Haubensak should be called for the signal trouble. The train dispatcher was advised of this but instructed track supervisor to go ahead and investigate the trouble. Both the supervisor and the dispatcher were aware that the signal trouble existed on a part of the territory embraced in the claimant's bulletined assignment, also that he was available and subject to call for such work."

It is Carrier's argument that its Conductor, upon investigation of why the signal failed to clear, saw that the switch points had not properly relined,

and that the work of maintaining the switch points and stock rail is Trackmen's.

It is further argued on behalf of Carrier that "no prerogative of management should be more self-evident than Carrier's sole right to decide what work is to be performed and Carrier's right to determine its time of performance, except where it has restricted itself by Agreement." A number of Awards, among them Awards 7307 (Larkin), 6208 (First Division—Mabry) and 7169 (Carter) are cited in support of its statement.

The Organization does not claim that the work done in rectifying the trouble was Signalmen's work, but does rely on Article II, Section 11-(a), reading:

"Employes assigned to, or filling vacancies, on a section or plant will be subject to call. Such employes will notify the designated officer where they may be called and will respond promptly when called. When such employes desire to leave their home station or section on other than scheduled release days provided in paragraph (b), they will secure authority from the designated officer who will grant permission if the requirements of the service will permit."

The Organization argues claimant "was available and qualified to perform the necessary maintenance. Also, the claimant was equipped with the necessary equipment to make the tests and inspections necessary to insure its safety and, therefore, he should have been called to perform the signal work. To state that no maintenance, tests or inspection was necessary on this signal failure is contradictory to outstanding instructions, practices and teachings of the Carrier."

The Organization did not cite any Awards to support its position, nor was any cited in its behalf.

In view of the record we must concur with argument presented on behalf of Carrier that "no prerogative of management should be more self-evident than Carrier's sole right to decide what work it to be performed and Carrier's right to determine its time of performance, except where it has restricted itself by Agreement."

We conclude, therefore, that Organization has failed to prove that the Agreement was violated. A denial award is in order.

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 was not violated.

AWARD

Claim (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.