

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when they assigned the work of installing, maintaining and repairing buffers on spring switches, to employes other than those holding seniority in the Maintenance of Way Track Department;

(2) Work in connection with the installation, maintaining and repairing of buffers on spring switches, be assigned to Track Department employes covered by the Maintenance of Way Agreement.

EMPLOYEES' STATEMENT OF FACTS: The use of spring-operated switches at the ends of double track and at passing sidings has made necessary the development of a retarding device to prevent the switch points from snapping shut between successive pairs of wheels, reducing the force of the blow upon the switch points and thereby increasing their service life.

On the majority of spring switch installations, on this Carrier's property, the buffing device is contained in a housing which also serves as the base of the stand. In other installations, it is contained in a unit which replaces the connecting rod. In the latest type of installation, this buffing device is attached to the end of the No. 1 switch rod, opposite the switch stand. Essentially, all types function identically, utilizing the same principle and differing only in the method of attachment.

Spring switches are designed to permit trains to make trailing movements through them, without the necessity of stopping to manually operate the switch, although such switches can also be operated manually.

Spring switch mechanisms include a coil spring which is compressed to hold the switch points in their normal positions. When a train trails through the switch, the lever of the stand does not move, but the springs are compressed to allow the points to be forced open enough for wheels to pass. As each wheel passes the spring tends to return the points to their normal positions. It is to offset the continuous slapping back and forth under each pair of wheels that the buffing device is installed.

work in question, and the other precluded from claiming it, or the Carrier may well become liable for substantial monetary claims. Any decision which does not dispose of the case in such a way as to determine the rights and interests of all the parties thereto, i. e., the Brotherhood of Maintenance of Way Employees, the Brotherhood of Railway Signalmen of America, and the Elgin, Joliet and Eastern Railway Company, will lead to further dispute which undoubtedly will result in the submission of penalty wage claims. The Carrier has attempted to obtain the entry of the Signalmen's Organization into this dispute as a party in order to assure that the decision in this case would be binding upon employees represented by such organization. In this it has failed, but it maintains nevertheless that no decision in this case properly can be rendered unless the Signalmen's Organization is made a party to such dispute, either voluntarily or involuntarily, and accordingly made subject to the operation of the award. Therefore the Carrier requests that the Board put the B.R.S.A. on notice that it will be bound by the award in this case, and afford such organization opportunity to present its views and arguments.

IV. CONCLUSION

The Carrier summarizes its arguments in this case as follows:

1. The scope of Rule 56 II(a) in the Organization's agreement does not specifically include the disputed work.
2. Past practice on the property has been to have the disputed work performed by signalmen, and therefore such work is included within the scope rule of the Signalmen's Agreement by the language "work generally recognized as Signal Work."
3. Rule 56 II(a) may be considered to be doubtful or ambiguous as to the disputed work, but if so, the interpretation of such rule then should be made in light of past practice on the property, and such past practice should be decisive in branding the disputed work as belonging to signalmen.
4. A survey of leading railroads supports the Carrier's position that the disputed work generally is considered to belong to signalmen.
5. The Railway Engineering and Maintenance Cyclopedia and the manual of the American Association of Railroads, are sources of further support for the Carrier's position.

The Carrier therefore submits that the claim of the Organization herein, being in derogation of the rights of signal forces on the property, being unsupported by the Organization's agreement, and being contrary to general practice and authoritative publications, should be denied.

All data herein have been discussed with the Organization either in conference or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier, commencing in 1930, has installed spring switches at various locations on its property. There is no dispute that track forces have in the past installed, maintained and renewed switches on this property. The only question before us is whether the installation, maintenance and repair of "buffers" is work that comes within the purview of the applicable provisions of the work classification rule covering track forces under the employees agreement, effective December 1, 1945.

The pertinent parts of the Rule read as follows:

"Classification

Rule 56. II. Track Department

(a) All work in connection with the construction, maintenance or dismantling of roadway and track, such as rail laying; tie renewals (except on open deck bridges); ballasting, lining and surfacing track, including the dismantling and replacing of highway crossings and walks required by such surfacing; maintaining and renewing frogs, switches, and railroad crossings; ditching, sloping and widening cuts; right of way fences; snow and sand fences; mowing and cleaning; brush cutting; patrolling and watching; loading, unloading and handling all kinds of track material; and all other work incident thereto, shall be track work."

"(i) All work described under Rule 56 (II) shall be performed by employes of the Track subdepartment (except as provided in memorandum of understanding dated November 8, 1939, and agreement with shop crafts effective April 3, 1922)."

The parties have dealt at length with the purposes served by spring switches and buffer devices in their submissions and it will not be necessary to restate them here. A "buffer" may be described as a retarding device to prevent the switch points from snapping shut between successive pairs of wheels reducing the force of the blow upon the switch points and thereby increasing their service life. A spring switch may be used with or without the buffer device. They are installed on and attached to the track structure proper and are in no way attached to or made a part of, any signal facility. It is conceded, however, that either the manual or automatic operation of spring switches on the property affected the signal aspect of certain signals.

The employes maintain that the work involved here comes within the purview of work described under Rule 56-II with particular reference to " * * * and all other work incident thereto * * *" They contend that since buffers are part of a spring switch installation the work of installing and maintaining buffers is properly the work of track department employes.

The Carrier first challenges the jurisdiction of the Board on the ground that the Signalmen's Organization, as a necessary third party, is not properly on notice in the instant dispute. The Carrier further contends that the scope of Rule 56 II (a) does not specifically include the disputed work; that past practice on the property has been to have the disputed work performed by Signalmen and that therefore such work is included within the scope rule of the Signalmen's Agreement by the language "work generally recognized as Signal work."

We will first consider the jurisdictional question. When this referee authorized First Division Award 16857, December 9, 1954, reference was made to the United States Circuit Court of Appeals decision in the Illinois Central vs. Whitehouse case subsequently reversed by the United States Supreme Court, 349 U. S. 366. We said there and at that time:

"In the light of the emerging pattern of decisional law on the subject here involved, this Division does not feel impelled to fly in the face of a doctrine which it finds clear and controlling, save of course a change by the Supreme Court of the United States or the enactment of contrary congressional legislation."

The Supreme Court having acted we are now constrained to follow the most recent awards, to which our attention has been directed, of this Division, 7311 and 7816 where we held respectively, " * * * it is concluded that no notice need be given beyond parties to the submission", and " * * * the Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter hereof." Therefore we will proceed to consideration of the merits.

The question before us is whether the work of installing, maintaining and repairing of buffers is covered by the work classification in the Agreement. In interpreting the same rule with the same parties involved in Award 7585, we said:

“* * * The answer to this question lies in the interpretation of the phrase ‘other work incident thereto.’

“‘Incident’ is defined by Webster’s New International Dictionary (2nd ed., Unabridged) as ‘liable to happen; apt to occur; befalling; hence, naturally, happening or appertaining, as a subordinate or subsidiary feature.’

“The meaning of the phrase ‘other work incident thereto’, even with the above definition in mind, is not sufficiently clear and unambiguous as to make the contention of either party to this case necessarily the right one. It is therefore proper to examine into the past practice of the parties in an effort to determine how they have interpreted and applied the disputed language of the rule. * * *”

The language of that Opinion is equally applicable here.

It is not disputed that the work involved was performed by Signalmen from the effective date of the Agreement up to the date of the claim February 29, 1950. There is also no dispute that for the 16 years prior to the present Agreement, under a scope rule not set forth in the record, the work of installing, maintaining and renewing switches has always been performed by track department employes and is presently performed by such employes, unquestioned by the Carrier, while the work of installing and maintaining buffers has been performed by Signal forces. In the light of these undisputed past practices we are compelled to find that the installation and maintenance of buffers could not be brought under an interpretation of the phrase “other work incident thereto.” An opposite result obtained in Award 7585 because there the past practice established that the work in question had been performed by Maintenance of Way employes.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.