

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE CHESAPEAKE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

All work in connection with construction and maintenance of bluff protection fences be allocated to employees covered by the Signalmen's Agreement.

EMPLOYES' STATEMENT OF FACTS: In 1926 bluff protection fences were installed on this Carrier's property at Gauley, W. Va., and Greenway, Va. These bluff protection fences were installed and have been maintained by Signal Department employees since that time.

In 1951 the Carrier installed bluff protection fences at Glade, W. Va., on the Hinton Division and at Tuckahoe, Va., on the Clinton Forge Division. They were constructed by planting old steel rails on end in concrete and attaching woven wire fencing thereto by large cotter keys placed through holes drilled in the base of the rails. This portion of the bluff protection fence was installed and is maintained by employees who hold no rights under the Signalmen's Agreement. Circuit controller mechanisms and wiring to connect this fence up with the signal system were installed and are maintained by Signal Department employees.

Bluff protection fences are always installed in conjunction with signals. They may be installed as part of the control to existing automatic signals or may be used to control signals installed for this specific purpose. A bluff protection fence does in fact become a part of the signal system; it must be a part of the signal control circuits to give the protection for which it is intended.

This dispute was handled in the usual manner on the property, without securing a satisfactory settlement.

There is an Agreement between the parties to this dispute with Rules effective August 16, 1946, except as otherwise indicated, and Basic Rates as of December 1, 1952. This Agreement is, by reference, made a part of the record in this case.

the construction of the bluff fences and other signal work, therefore, I contend that all of the work belongs to the Signal Department. . . ."

The position of the Carrier with respect to the foregoing is that it has no bearing on the issue involved, because the Maintenance of Way Employees have historically installed track rails and switches in both signaled and non-signaled territories. When rail or switches are installed in signaled territory by maintenance of way employees, the signal employees then do the bonding and other hooking up of signal equipment or apparatus required, which is identical in principle to the matter here under consideration.

In discussing this case on the property the employees have cited Third Division Award 2094 in support of their position. The question involved in that award was the rate which should be paid to section laborers who performed work on a bluff fence on the D&RGW originally constructed by signal employees. It is the position of the Carrier that such award cannot be used as a basis for allocating the work in this instance.

Third Division Award 6207 involves a similar principle and a similar scope rule in claimants' agreement, and the employee's claim in that instance was declined. In that Award the Board stated in part as follows:

"Under the terms of the Scope Rule the burden is on the Organization to establish that that part of the installation performed by B&B and E.T. employees in the instant case, has been generally recognized as telegraph, telephone or signal work. . . ."

The Carrier submits that it is impossible for the Organization in the instant case to establish that the part of the projects here involved performed by B&B employees has been generally recognized as signal work.

Therefore, Carrier has shown that the Signalmen's Agreement was not violated in assigning the work covered by this claim to Maintenance of Way Employees, and the claim should be declined.

2. A sustaining award would infringe upon the rights of another craft.

The classification rule of the Maintenance of Way Agreement is the only agreement rule making reference to fences, and forces covered by that agreement have historically been used to do fence building and maintenance work, as related above.

The Carrier submits that the Board should give due notice to the Brotherhood of Maintenance of Way Employees, as an interested party to this dispute, in order that there may be no infringement of the rules of the Maintenance of Way Employees.

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All data submitted have been discussed in conference or by correspondence with the employee representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: A motion, such as appears in this docket, to the effect that action be withheld pending the giving of proper notice to other parties has been discussed in our Award 8070. The similar motion here is disposed of in accordance with the Opinion in that Award. We now proceed to the merits.

In 1926, at three different locations, signalmen installed bluff protection devices and have since that time maintained them.

These devices are composed of parallel pairs of insulated single wires attached to insulators atop short T shaped posts some 18 inches high. In multiple track territory a similar arrangement is also located in the center ditch between the tracks. As these wires are actually a part of the circuit controlling the signals governing movements through the protected area, any object breaking one of the wires causes the signals to display their most restrictive indication.

In 1949 Carrier installed a different type bluff protection device and since that time has caused to be installed and placed in service numerous other similar devices.

This type device was constructed by using old steel rails as posts, setting them in concrete. Heavy gauge woven wire fencing was attached to the end posts by means of coil springs. Holes were drilled in the bases of the rails used as intermediate posts and large cotter keys were used to attach the fencing thereto, the cotter key eyes encircling the horizontal wires in the fencing, thereby permitting certain movement.

Signal circuit controllers (installed at appropriate intervals in this fence) were hooked into the circuits of the signals controlling movements through the area being protected, and were adjusted to where a moving mass or object coming into contact with the fencing and causing it to move beyond a predetermined amount would result in those signals displaying their most restrictive indication.

All material for the fence proper was ordered by the Bridge and Building Department, and their employes, (who are covered by the Maintenance of Way Agreement) were used to do all the work of installing the fence itself. This included the posts, post bracing, and woven wire. Maintenance of way employes also maintain the fence proper.

The Signal Department ordered the circuit controllers and all signal material necessary to change the signal control system to function as intended in connection with the bluff fence. Signal employes covered by the Signalmen's Agreement were used to do all construction work in connection with this phase of the project and have been assigned the maintenance work on that same part.

The installation at Glade, West Virginia, described immediately above and referred to by the employes is approximately 2800 feet in length and was built between the westward main line track and adjacent bluffs from which rock or dirt slides might be expected.

The employes rely on their Scope Rule and contend that it reserves to their craft the maintenance, repair and construction of all apparatus pertaining to the signal system. They also rely on past practice with respect to the 3 bluff protection devices first described herein. They also maintain that both protection devices are bluff protection fences and were designed for the purpose of protecting the movement of trains in the event of a dirt or rock slide.

The Carrier alleges that the first three devices described were actually bluff protection circuits and for that reason it had always been considered proper for Signalmen to do the work on such installations. Carrier also contends that the Signal circuit controllers were comparable to the earlier installations where Signal employes performed the work. That with respect to the installations constructed in 1949 and subsequently that particular work was allocated to Signal employes.

The descriptions of the two bluff protection devices provide a sound basis for differentiation and support the Carrier's contentions. These later fences do not constitute any part of the signal system until circuit controllers are installed. The practice on which the employes rely only reserves to them

that work which here they actually did perform, that of installing and maintaining circuit controllers and other signal material. The employees in their supplemental statement admit that the bluff fence, such as installed at Glade, W. Va., was installed to protect the right of way from falling rocks and dirt slides and that they only operate signals if a slide should occur which would affect the alignment of the fence. Carrier's photographic Exhibits and visual confirmation to this distinction in installations. It cannot be said here that the employees have satisfactorily discharged the burden of establishing that that part of the installation performed by Maintenance of Way employees has been generally recognized as Signal work.

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 Employees involved in this dispute are respectively Carrier and Employees 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 28th day of April, 1958.