

Award No. 11299

Docket No. SG-10865

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific
Railroad Company—Fort Worth and Denver Railway Company
(Burlington-Rock Island Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of Railroad Signalmen of America on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company, that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 23, when it required Signal Maintainer J. F. Aust, whose headquarters are at North Zulch, Texas, to perform ordinary maintenance work on the sixth day of his work week (Saturday, October 12, 1957), and denied him overtime pay for such service.

(b) The Carrier now compensate Signal Maintainer J. F. Aust for the six hours actually worked on Saturday, October 12, 1957, (11:00 A.M. to 5:00 P.M.), at his punitive rate of pay (\$474.59 per month—basic hourly rate \$2.249). (Carrier's File: Jt SG-3)

EMPLOYEES' STATEMENT OF FACTS: The claimant, Signal Maintainer J. F. Aust, is regularly assigned as Signal Maintainer, with headquarters at North Zulch, Texas, on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company.

On October 11, 1957, the claimant was informed by Roadmaster B. L. Sealy that the rail detector car would test rail on the claimant's district Saturday, October 12, and that if they found any defective rail that had to be changed out, they would call him. On October 12, 1957, Roadmaster Sealy called the operator at North Zulch depot and asked him to call the claimant long distance at Normangee, Texas, which is approximately 7.8 miles from North Zulch. The claimant received the call at 11:00 A.M. The phone wires were not clear, so the claimant went to the dispatcher's phone at the railroad depot at Normangee and was advised by the dispatcher that Roadmaster Sealy wanted him (the claimant) to pick up two section men and come to Mile Post 139, pole 10, to change out and bond a rail. North Zulch is located at

there is no requirement that he do so. Claimant Aust was not called until after the defective rail was located. Neither the signal maintainer nor the section forces are called unless a defective rail is discovered, and no emergency exists until and unless a defective rail is located, when the services of the section forces and the signal maintainers are required to change it out. As previously discussed, the serious delay of trains has always been an emergency condition, and the service required to correct serious delays to trains or to correct a possible hazard of accident has always been considered as coming under the status of emergency service.

Under the provisions of Section 25(f), Part I, Interstate Commerce Act, the Carrier is required to report to the Commission any accident resulting from failure of the automatic block system in effect. Moreover, Carrier is subject to penalty for each day of neglect to "comply with any of the orders, rules, regulations, standards or instructions made, prescribed, or approved hereunder . . ." Clearly, neglect to bond the rails replaced promptly would make inoperative the automatic block system, and neglect of this defect would not be in compliance with the direction of the Act. It must be admitted that failure to give emergency status to the changing out of the defective rails in question would have, as previously pointed out, not only violated the rules governing the employment of Signal Maintainer Aust, but, in addition, would have failed to meet the requirements of the Law.

Where the word "emergency" is not defined in a labor agreement as is the case in the agreement between the parties to this dispute, the Board has held that it can not add to the effective agreement exceptions and conditions not bargained for, but must rely upon the rules under which the claimants are working to determine the protection required under unforeseen and emergency circumstances. It is clear that the rules above quoted under which Claimant Aust was working, command his immediate attention to the changing out of the defective rails found. No emergency existed until the defective rails were found, and, as previously pointed out, it is not anticipated that any defective rails will be found on any given signal maintainer's territory, as the detector car has operated over the entire railroad without discovering any defective rails. In First Division Award 15450, with Referee Mart J. O'Malley, the Board defines an emergency where that word was not defined or limited in the governing agreement, and stated: "An emergency is 'an unforeseen combination of circumstances which calls for immediate action,' also less properly it is said to be an 'exigency.' That word exigency has been held to mean a 'case demanding action or remedy.'" The rules governing the employment of Claimant Aust certainly demanded that he take prompt action to remedy the discovered condition due to defective rails being found on his territory. In applying the definition given the word "emergency" in the above-quoted award, there is no element of doubt that Claimant Aust was called for emergency service.

It has been conclusively shown that by the rules and instructions under which the claimant signal maintainer was working, the changing out of a defective rail is an emergency. Therefore, on the record it can not be held that the work performed on Saturday, October 12, 1957, by Claimant constituted any violation of Rule 23(h), which leaves the claim without merit, and a denial award is respectfully requested.

All matters contained herein have been subject of conference discussion and correspondence between the parties.

OPINION OF BOARD: On October 12, 1957, the Claimant was called and

directed to pick up two section men for the purpose of changing out and bonding a rail. He could find only one. They completed the job. Claimant was then directed to follow the detector car to Shiro, Texas, which is about five miles beyond Claimant's assigned territory.

Since the above service was on Claimant's sixth day, a claim was filed for six hours at the punitive rate.

The Carrier contends that this was emergency service and therefore under Rule 23(h), the Carrier had the right to require Claimant to perform such service.

The Petitioner contends that the work performed was not emergency service and therefore the claim should be sustained.

We are of the opinion that the work of changing and bonding the rails were emergency service. However the remainder of the work was not emergency service.

Therefore, Claimant is entitled to 4:35 minutes at the punitive rate.

For the foregoing reasons, we believe the Agreement was violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained as set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1963.