

Award No. 11508

Docket No. SG-11099

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement, effective February 16, 1949, as amended, especially the Scope, Rule 1, when, on October 29, 1957, it assigned or otherwise diverted generally recognized signal work to Assistant Signal Supervisor Kirkpatrick, who is not covered by the Signalmen's Agreement but who placed a shunt on a track circuit for the purpose of causing a signal to display a restrictive indication so that he could conduct an efficiency test.

(b) The Carrier now compensate Signal Maintainer E. E. Gaines and Signal Helper Foley Bustle for four hours at their respective overtime rates of pay in addition to compensation already paid to them for October 29, 1957. [Carrier's file G-304-3, G-304]

EMPLOYEES' STATEMENT OF FACTS: Prior to October 29, 1957, Mr. E. E. Gaines had been assigned to a position of Signal Maintainer with assigned territorial limits, and Mr. Foley Bustle was the Signal Helper assigned to work with him. From about 12:30 P. M. until 1:35 P. M. on October 29, 1957, Assistant Signal Supervisor Kirkpatrick was observed using a shunt cord to shunt (or short) a circuit at Bagdad, Kentucky, in the company of other persons, for the purpose of conducting efficiency tests. Bagdad is on the territory to which Signal Maintainer Gaines and Signal Helper Bustle had been assigned. The shunt was used by Mr. Kirkpatrick to cause an automatically-operated signal to operate abnormally. Inasmuch as an employe who is not covered by the Signalmen's Agreement had been assigned by the Carrier to interfere with the normal operation of the signal system and this is work covered by the Scope Rule of that agreement, General Chairman Tom McCamy presented the following claim to Signal Supervisor J. F. Wiseman on November 6, 1957:

"On October 29, 1957 at Bagdad, Kentucky, the Assistant Signal Supervisor, Mr. Kirkpatrick, was observed using a shunt wire for the purpose of conducting so called efficiency tests. The observation was

"The question presented by this submission is whether or not the placing of a temporary shunt on a track circuit while a cribbing machine is being removed from the tracks constitutes signal work falling within the scope of the Signal Department Employees' Agreement of June 1, 1944, and to be performed exclusively by employees of such class. The work was done upon this property by Maintenance of Way employees. (Emphasis ours.)

"The Scope Rule in the agreement before us reads:

"This agreement covers rates of pay, hours of service and working conditions of all employees specified in Article 1 engaged in the installation and maintenance of signal apparatus and performing work generally recognized as signal work."

"See also Rule 4.

"The act complained of clearly does not fall within the scope of the first emphasized phrase. True, 'maintenance' contemplates the proper functioning of the signals as stated in Award No. 3688, but when considered in connection with the use of a lining bar or some other device or a shunt of their own design long applied by non-skilled employees on this line, we are not impressed with the contention of the intricacies involved in its proper application and interference with the proper functioning of the signal system. In interpreting the general language contained in the second emphasized phrase, we must resort to custom and practice to ascertain if the work in question has been generally recognized as signal work. * * *"

As previously stated by carrier, it has been the practice for many years on this railroad for officials to make efficiency tests which include the use of a shunt wire placed across the rails in making automatic block or interlocking signal tests. The placing of a shunt wire across the rails has never been recognized as signal work.

Carrier submits it is apparent from the foregoing that the signal supervisor and assistant supervisor applying a temporary shunt wire on the track for the purpose of making an efficiency test, does not constitute carrier assigning or otherwise directing generally recognized signal work to persons not covered by the signalmen's agreement, in violation of the agreement, as contended by the employees.

It is also apparent that the shunting of a circuit by use of a temporary shunt wire does not constitute "work" reserved exclusively to employees covered by the signalmen's agreement.

It is, therefore, obvious there is no basis for the claim, contractually or otherwise, and that same should be declined.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: As in Award No. 11507, Docket No. SG-11003, the Scope Provision of the Agreement reserves to Signalmen "any other work

generally recognized as signal work"; and, the issue presented is whether the shunting of the signal system circuit by a supervisory employe, engaged in conducting an efficiency test, violated the Agreement.

For the reasons stated in Award No. 11507, Docket No. SG-11003, we will sustain the claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.

CARRIER MEMBERS' DISSENT AWARD 11508, DOCKET SG-11099

The Carrier Members have dissented to Award 11507 — Docket SG-11099.

What we have said in our dissent to Award 11507 is equally applicable to Award 11508 — Docket SG-11099, and is, by reference, made a part hereof.

R. E. Black

R. A. DeRossett

W. F. Euker

W. M. Roberts

G. L. Naylor