

Award No. 12329
Docket No. SG-11711

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) The Carrier violated the current Signalmen's Agreement, in particular Rule 1 (the Scope Rule), when it assigned to employees who were not covered by the Signalmen's Agreement the work of cutting and removing rail bond wires during the rail laying program on the Clifton Forge Division from October 13, 1958, thru December 5, 1958.

(b) Signalman Louis E. Welch be paid Signalman's pro rata rate for the comparable time that employees not covered by the Signalmen's Agreement were used to cut and remove rail bond wires during the rail laying program on the Clifton Forge Division from October 13, 1958, thru December 5, 1958. [Carrier's File: SG-129]

EMPLOYEES' STATEMENT OF FACTS: On various days during October, November and December, 1958, the Carrier was engaged in laying new rail, and Signalman L. E. Welch and Assistant Signalman W. F. Grimes were assigned to work with the rail-laying forces to perform the necessary signal work in connection with the rail-laying program, such work including the installation of new bond wires and insulated track joints.

During that rail-laying program, the Carrier assigned a track laborer to remove the bond wires from the rail being removed. As the track laborer who removed the bond wires holds no seniority or other rights under the Signalmen's Agreement, Mr. S. H. Bostic, Local Chairman, presented the following claim dated December 6, 1958, to Mr. H. B. Orr, Division Engineer:

"The Local Committee has been directed to present this claim in behalf of Signalman Louis E. Welch, identification No. 218042, assigned to the rail laying program on the Clifton Forge Division.

It is the claim of the Local Committee that:

the track, the new rails taking their place in the signal system. As shown above, signal employees did all of the bonding of the new rails for operation of the signal circuits. This case does not support the claim.

AWARD 3688

This award, like Award 5428, involved shunting of the signal circuit. Nothing of that nature is involved in the instant case.

Such awards, therefore, all fail to support the claim.

CONCLUSION

1. All of the work in question was performed by maintenance of way employees under their agreement in accordance with the practice and application of both the Maintenance of Way and Signalmen's Agreements down through the developments on this railroad.
2. This case seeks transfer of such work from the Maintenance of Way Agreement to the Signalmen's Agreement.
3. There has been no violation of the Signalmen's Agreement, and the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. Laying of new rail to replace worn out rail in the main tracks on the Clifton Forge Division of the Carrier was done during October, November and December, 1958. Maintenance of Way employees did the actual rail displacement. A Signalman and an Assistant Signalman were assigned to work with the maintenance of way track forces.

Before the rail laying operations started each day, the signal employees removed the track relay wires to take the signals out of service. At the end of each day the signal employees restored the relay control wires.

Throughout the entire period of rail laying operations, the Signalmen drilled the new rails and applied new bond wires, disconnected the signal circuit to the track at battery cut sections and at signal locations, and performed all signalmen's work on insulated joints and around the new track turnouts.

A track laborer removed the angle bars from the old rails which had been removed from the track and then knocked off the old bond wires with a hammer and chisel. The bond wires and plugs so knocked off were allowed to fall alongside the track with the angle bars, old spikes, old bolts, old rail anchors, etc., and they were later picked up by the track men with other scrap material.

Petitioner contends that the severance of the bond was work on an appurtenance under Rule 1—Scope which should have been done by Signalmen. In support thereof, Petitioner cites Award 6584 (Bakke).

The facts in the claim which was sustained in Award 6584 are distinguishable from those which gave rise to the claim now under consideration. In the former claim, the track forces, in the absence of a Signaller, "opened a track circuit governing the automatic signals in C.T.C. territory . . . The integrity of this particular track circuit was destroyed when the track forces opened the track, and concurrently opened the track circuit by severing the rail joint bonds and removed the rails." We properly held, under those circumstances, that the "severance of the bond was work on an appurtenance . . . which term is explicitly covered in the scope rule."

In the claim before us, Signalmen "disconnected the signal circuit to the track at battery cut sections and at signal locations." Signalmen cut out the signal circuits and then the track forces broke the track, removed the old rails and rail fastenings, and set in the new rails and new rail fastenings. The old bond wires were broken by the track men after Signalmen cut the signal circuits and the rails had been removed. Under these circumstances, the knocking off of the bond wires was not an appurtenance within the meaning of the Scope Rule.

In Award 8069 (Beatty) we sustained the claim because the breaking of the track bond "had the effect of opening the circuit." We said:

"We are inclined to believe that the mere cutting, removal, dismantling, destruction or salvaging of equipment is not necessarily reserved to those who construct it in the first place, for such operations seldom if ever require comparable skills, but in the case at hand we believe the breaking of the track bonds, which had the effect of opening the circuit and affecting the whole signal system within the CTC was an appurtenance to and an integral part of the signal system and that under these circumstances it is embraced within the broad language of the contract . . ."

* * * * *

"The Carrier's argument that no one cut the bonds but that they merely broke as an incident of rolling out the rails does not appeal to us as realistic or as a valid reason for denying that any signal work was involved."

The Signal Maintainer was approached about being on hand but when he pointed out that he would be entitled to overtime his services were dispensed with for the two hours in question and the three days in question."

In the instant claim, Signalmen were present and did open the circuit and took the signal circuits out of service before track men broke the rails. The breaking of the bonds by the track men did not affect the signal system. It was a salvaging operation.

On the basis of the record and the applicable Awards, we conclude that the knocking off of the bond wires, as was done in this case, was not a violation of Rule 1 — Scope of the Agreement.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 13th day of March 1964.