

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Levi M. Hall, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) The Carrier violated the Scope, Classification and other provisions of the Signalmen's Agreement, particularly Rules No. 6 and 19 on April 4, 1959, when it failed to call J. K. Kimberling, Signal Maintainer at Jonesboro, Arkansas, to clear signal trouble at Hoxie, Arkansas.

(b) Mr. J. K. Kimberling be compensated 2.7 hours at his respective overtime rate, which is the number of hours he would have received if he had been called to clear signal trouble at Hoxie, Arkansas.  
[Carrier's File: D-3504]

**EMPLOYEES' STATEMENT OF FACTS:** The claimant in this dispute is Mr. J. K. Kimberling, Signal Maintainer at Jonesboro, Arkansas.

On April 4, 1959, the operator at Hoxie, Arkansas, reported to the dispatcher that signal 3980 at Hoxie was red (stop position). The dispatcher then instructed the operator to call a Maintenance of Way employe to investigate. The Maintenance of Way foreman who was called reportedly swept out and operated the spring switch at the north end of the passing track at Hoxie, after which signal 3980 cleared up. As the Maintenance of Way foreman who was called holds no seniority or other rights under the Signalmen's Agreement, Mr. J. T. Cunningham, General Chairman, presented the following claim to Mr. R. E. Testerman, Superintendent Signals, on May 30, 1959:

"It has been called to my attention that on April 3, 1959, Section Gang was called to clear trouble at Signal 3980 at Hoxie, Arkansas. Operator at Hoxie, Arkansas, reported to Dispatcher that Signal 3980 was red. The Dispatcher had operator call Section men to see what the trouble was. According to reports to me, this has happened three times in past three months. The Signal Maintainer should be called to clear this trouble. Please consider this as a claim as follows:

**OPINION OF BOARD:** On April 4, 1959, the operator at Hoxie, Arkansas, reported that the signal at Hoxie was red (stop position). The Dispatcher instructed the operator to call a Maintenance of Way employee to investigate. The Maintenance of Way foreman swept out and operated the spring switch at the north end of the passing track at Hoxie, after which the signal cleared up.

The Claimant contends that Carrier violated Rules 6 and 19 of the Agreement, in that Carrier failed to call J. K. Kimberling, Signal Maintainer, at Jonesboro, Arkansas, to investigate and clear the signal trouble at Hoxie and that Claimant should be compensated.

Carrier maintains that the work performed by the foreman was in line with track work, as cleaning switches is part of the job of Maintenance of Way employees, and that he performed no work which could be classed as work assigned to the Signal Maintainer.

It was urged by the Carrier that the claim presented for consideration by this Board is not the one that was presented during the progress of the claim on the property. This contention is without merit as it cannot be seriously urged that Carrier was misled as to what the claim was at any stage of the proceeding. Likewise, though at one stage of the proceeding, prior to the appeal to this Board, the General Chairman addressed a communication to the Superintendent of Signals that all claims of the Claimant had been closed, whatever may have prompted him to do so, it does not act as an estoppel to the processing of the claim to this Board.

There is no denial in the record by the Claimant that cleaning switches is part of the work of Maintenance of Way employees. What the Claimant is requesting here is—that this Board hold that regardless of the cause for a signal indication, a Signal Maintainer must be called.

From the record, there is no indication that the signal failed. There would have been a signal failure and need for the services of a Signal Maintainer had the signal remained red with the switch points closed, or had it cleared with the switch points open. That is not the situation here—after the switch was swept and any foreign substance removed and the switch points were permitted to contact, the signal cleared immediately, and the services of the Claimant were not required. See Award 7849—Lynch.

**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 has not been violated.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1964.

## DISSENT TO AWARD 12829, DOCKET SG-12144

The Majority, consisting of the Referee and the Carrier Members, properly rejected the Carrier's attempt to have the case thrown out on pica-yunish procedural objections obviously injected for the sole purpose of drawing attention away from the real issue, and in this respect the Carrier was successful.

In setting the stage for a denial award the Majority says that the Employees do not deny that the cleaning of switches is part of the work of Maintenance of Way Employees which, if correct, and it isn't, is beside the point because at the time the District Gang Foreman (track) was called, there was no indication that the switch needed cleaning.

Contrary to what the Majority says, the Employees were not requesting "that this Board hold that regardless of the cause for a signal indication a signal maintainer must be called." This was sheer speculation injected by the Carrier in its rebuttal statement.

The Employees maintained throughout the record that the only reason for calling anyone was the fact that signal 3980 was red. It is for occasions such as this that the signal maintenance employees hold themselves available for call under Rule 19. What the situation would be where a signal is red because of some known condition (Award 7849-Lynch) is an entirely different case and one which the Division was not called upon to decide in this instance.

The Majority's assertion that "From the record, there is no indication that the signal failed" is misleading in that it is based on information obtained in the course of determining why Signal 3980 was red.

The Majority's definition of a signal failure is unique in that it can well result in having to call two or more classes of employees to correct one signal failure.

This award falls far short of giving reasonable and workable interpretation and application to the provision of the parties' Agreement. Therefore, I dissent.

G. Orndorff

Labor Member