

Award No. 13036
Docket No. SG-12545

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

(a) The Carrier violated and continues to violate Section 6(b) of Article I and Section 1 of Article V of the current Signalmen's Agreement when it failed to apply the CTC Signal Maintainer's rate to the Strong City territory, now held by Signal Maintainer R. A. Mitchell, with the effective date of the change.

(b) Signal Maintainer R. A. Mitchell be paid the CTC Signal Maintainer's rate of pay commencing with July 23, 1959.
[Carrier's File: 132-128-16]

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the same general question that was also involved in the claims disposed of by Third Division Award Nos. 9060, 9061, 9062, 9063, 9064, 9065 and 9066 — whether or not the Carrier violated Section 6-(b), Article I, and Section 1, Article V of the current Signalmen's Agreement when it failed to apply the CTC Signal Maintainer rate of pay to a signal maintenance position.

The CTC apparatus involved herein, located between Neva and Strong City, Kansas, is part of a CTC installation that is controlled from the CTC control machine located at Newton, Kansas, and is located on the Strong City signal maintenance territory. At the time this dispute arose, the claimant in this dispute, Mr. R. A. Mitchell, was the incumbent of the Strong City signal maintenance position.

Under date of October 31, 1958, the Carrier filed application with the Interstate Commerce Commission for approval of changes in the signal system between Neva and Strong City. The ICC issued a "Public Notice" concerning this application, with the stipulation that any interested party desiring to be heard upon such application shall advise the Commission and the applicant in writing within 20 days from the date of the notice. The "Public Notice" read as follows:

In summarizing, the instant dispute actually presents only one question and that is whether the territory between the interlockings at Neva and Strong City on the North or Westward Main Line is, in fact, a continuous Centralized Traffic Control installation or Traffic Control System as alleged by the Employees. That this territory is neither Centralized Traffic Control nor Traffic Control territory has been definitely established herein by the Carrier in that:

- (1) The signal system in effect as described does not conform to the definition of "Centralized Traffic Control" as defined by Carrier's Operating Department Rule Book, revised in 1953; not to the Definition "Traffic Control System" as defined by Carrier's Operating Rule Book, revised December 6, 1959.
- (2) This territory is not, and has not been, designated as either "Centralized Traffic Control" or "Traffic Control System" territory in the Carrier's Time Table; and,
- (3) Neither "Centralized Traffic Control" nor "Traffic Control System" operating rules have at any time governed the movement of trains and engines over this territory.

Obviously, the answer to the aforementioned question is "NO".

The Carrier, in addition, has clearly shown that the installations at Neva and Strong City are nothing more than segregated remote control installations as referred to in Article I, Section 6-(b) of the current Signalmen's Agreement which specifically states that such installations do not change the classification of a signal maintainer.

Since the Carrier has definitely established that (1) neither all nor a part of the claimant's assigned section or territory is included in a continuous CTC installation and (2) the installation which is the basis of the Employees' claim is simply an "individual segregated remote control installation", as that term is used in Article I, Section 6-(b) of the Signalmen's Agreement, it should be obvious that the Employees are, through the medium of their claim in the instant dispute, attempting to have the Board amend or revise the aforementioned Article I, Section 6-(b) by eliminating the last sentence thereof. Without reciting the numerous awards of the Third Division that have so held, it is sufficient to say that the Board has repeatedly and consistently recognized that it is without authority to add to, take from or otherwise amend or revise agreement rules as written and agreed to by the parties to a dispute.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in this instance is wholly without merit or support under the current Signalmen's Agreement and should, for the reasons stated herein, be either dismissed or denied in its entirety.

OPINION OF BOARD: The question in this dispute is whether Claimant is entitled to the CTC Signal Maintainer's rate under the provisions of Article I, Section 6(b) of the Agreement, as a result of changes made by the Carrier on his signal section.

On July 23, 1959 the Carrier, in order to eliminate the crossing over of Strong City, Kansas, District trains from the eastward to the westward main

track and vice-versa at Neva, Kansas, made certain changes in the track and interlocking facilities at Neva to provide traffic reversal on the north or westward main track between Neva and Strong City, a distance of 4.1 miles. At the same time, the small code control machine located in the depot of Strong City, which was operated by telegraph service employes, and which controlled the interlockings at Neva and Strong City was taken out of service, and in lieu thereof another small code control machine was installed in the dispatcher's office at Newton, Kansas, adjacent to the Fourth District code control machine. The switches and signals controlled by this substitute machine are operated by the dispatchers at Newton. This same code control machine also controls similar interlockings at Florence and Ellinor, Kansas.

There is no dispute that the Fourth District code control machine between Ellinor and Wellington, which is also operated by the dispatcher at Newton, is part of the traffic control system between those points. The dispute is whether the code control machine to control the signals at Neva, which is operated by the same dispatcher at Newton, is or is not a part of this traffic control system, thereby determining whether the Claimant is entitled to the CTC Signal Maintainer's rate of pay.

The employes contend that the code control machine controlling the signals at Neva is part of the traffic control system because the code wire circuits for the two machines are the same and are carried on the pole line which the Claimant maintains across his entire territory. Further, the employes contend that notwithstanding the territory having been designated by the Carrier as Automatic Block System and Automatic Train Stop territory, trains are actually operated in either direction by signal indication and without superiority and without requiring the use of train orders, thereby making the installation a continuous CTC installation extending between Neva and Strong City. The employes conclude that the Neva to Strong City installation is no longer a segregated remote control installation as it was when telegraphers were operating the machine, but is part of the traffic control apparatus under the control of the dispatcher at Newton since the dispatcher now operates all of the coding machines involved in this dispute using the same power source and the same code lines.

The Carrier contends that the code control machine controlling the signals at Neva is not part of the traffic control system, but instead is an individual segregated remote control installation falling within the exception of Article I, Section 6(b) of the Signalmen's Agreement. In support of its contention, the Carrier notes that operating rules applicable to CTC territory are not in effect and the applicable time table does not designate the territory involved, or any part of it, as CTC territory, but does designate it entirely as Automatic Block System and Automatic Train Stop territory. The Carrier concludes in this respect that to be CTC territory it would have to be so designated in the Carrier's time tables. Explaining the use of common code circuit wires, the Carrier states that rather than string additional wires from Strong City to Newton to connect the dispatcher's office with the segregated remote control installations at Neva and Strong City, it connected with and superimposed on the existing code line, an independent coding system controlling only First District segregated remote control installations covering interlockings at Florence, Neva, Strong City and Ellinor. From this the Carrier concludes that the independent coding system is neither related to the Fourth District CTC, nor can it be considered as being in any way a part of the Fourth District CTC.

On balance, we think the employees make the stronger case and the claim should be sustained.

Each side refers to a series of awards by Referee Johnson (Awards 9060—9066) as having direct bearing on this dispute, the employees relying on the sustaining Award in 9066 and the Carrier relying on a denial Award 9062. Each side contends that the circumstances in the case which it cites are identical with those in this case and should therefore be controlling.

We do not think either of those cases is identical with this one and therefore cannot be controlling, although each of those cases, and the others decided by that referee are very helpful in that they provide considered, authoritative precedent for this dispute. For instance, in Award 9066, the claim was sustained even though the Carrier had not designated the signal territory in dispute as CTC territory. This, of course, establishes precedent against Carrier's contention that to be CTC territory it would have to be so designated in the Carrier's time table. On the other hand, Award 9062 establishes that the character of the installation does not change with the simple substitution of dispatcher control in one central place for individual control by other employees, thereby establishing precedent against the employees contention that consolidation of control under a dispatcher constitutes a traffic control system.

We decide this case in favor of the employees, and distinguish it from the other awards cited because in the Neva-Strong City area block signals, controlled by the dispatcher at Newton, superseded the superiority of trains on the westward main track. This fact, coupled with the precedent in Award 9066 that the designation of the territory by the Carrier is not controlling, indicate that a traffic control rather than Automatic Block System operated in this territory.

More importantly, it is undisputed that the Claimant Signal Maintainer maintains the code wire circuits for the two machines in the dispatcher's office, even though the codes are superimposed one upon the other, because they are carried on the same pole line in his territory. Since the specific dispute here concerns the work of the Signal Maintainer it must be concluded that if he works on code wire circuits, one of which is in the traffic control system, he comes within the ambit of Article I, Section 6(b) which prescribes CTC Signal Maintainer rates of pay if he works on all or a part of a continuous CTC installation.

Finally, we think the Carrier treats too lightly the action of the Interstate Commerce Commission in authorizing the changes requested by the Carrier. Although the Carrier in its application for such changes did not refer to the installation of a traffic control system, the fact that the ICC construed the changes to be the "installation of traffic control system . . . in lieu of present automatic block signal" cannot be disregarded. Since this commission has statutory authority to authorize these changes and considers many different applications for such changes, its characterization of the changes it authorizes must be given presumptive validity.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1964.