Award No. 13143
Docket No. SG-12719

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly the Scope Rule, when it failed and/or declined to be governed by this Agreement, by not assigning signal work to employes of the Signal Department on February 16, and February 17, 1960. This work being the work of protecting a crossing at Aurora, which is ordinarily protected by crossing signal. The crossing signal being destroyed beyond immediate repair at approximately 11:15 A.M. on February 16, 1960.

(b) Mr. R. C. Hanneman, Signal Maintainer, Canby, be allowed 12½ hours at the overtime rate of Signalman's pay for the hours 7:00 P.M. February 16, 1960, and 7:30 A.M. February 17, 1960, account of track forces performing Signal Maintainer Hanneman's work. [Carrier's file: SIG 152-73]

EMPLOYES' STATEMENT OF FACTS: At approximately 11:15 A.M. on February 16, 1960, a train-truck collision at a highway-railroad grade crossing resulted in serious damage to a highway crossing protection signal that had been installed and was being maintained by signal employes covered by the current Signalmen's Agreement. The Claimant, Signal Maintainer R. C. Hanneman, proceeded to the scene of this accident as soon as he heard about it, surveyed the damage, ascertained that the crossing protection signal was damaged beyond immediate repair, and gave a report to the Signal Supervisor.

The Signal Supervisor instructed the Claimant to protect the crossing until quitting time, at which time he would be relieved by track forces. After a track laborer arrived at 6:00 P.M., the Claimant gave him instructions about protecting the crossing in the absence of the automatic signal, then went off duty at 7:00 P.M.

to signal forces. This crossing protection was installed and is maintained by Signal forces so we should protect the crossing when it is not working."

Carrier submits it is clear from an examination of the facts in this case that there was no intention on the part of Division supervisory forces to use Claimant herein in the capacity of crossing flagman; when Claimant's investigation of the signal equipment at the crossing involved revealed that the wig-wag signal could not be repaired immediately there was not available a Maintenance of Way employe who could be used to protect the crossing in capacity of flagman, and in those circumstances, to assure that the crossing would be properly protected during time wig-wag was inoperative, Claimant was required to afford such protection. However, when a Maintenance of Way employe did become available (Extra Gang Laborer E. Richmond) he was promptly sent to the crossing where he went on duty at 5:30 P. M. Extra Gang Laborer Richmond performed service as crossing flagman until midnight, when he was relieved by Extra Gang Laborer Jackson, who protected the involved crossing from 12:01 A. M. February 17 to 7:30 A. M. that date. Claimant was again required to protect the crossing while signal gang made repairs to the damaged wig-wag.

Whatever the General Chairman's feelings in the matter may be, as expressed in the paragraph quoted hereinabove, lacking Agreement authority, as they do in this instance, they can hardly influence a decision going to the merit of this claim. Further, since Maintenance of Way employes used as crossing flagmen during the period here involved were compensated at the overtime rate of pay, General Chairman's argument that they were used "to avoid payment of overtime to signal forces" is not convincing, granted the extra gang laborers used were compensated at a lower rate of pay.

The handling evident in this Docket in connection with providing crossing flag protection conforms to a practice long in effect on this property. Both Maintenance of Way and Signal Department employes have been used for this service, depending upon the particular circumstances involved, and the determination of which of those classes will be used in a prerogative reserved to management.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At 11:15 A. M., February 16, 1960, a crossing accident at Aurora, Oregon, damaged the wig-wag crossing signal rendering it inoperative. Signal Maintainer R. C. Hanneman, with headquarters in Canby, Oregon, and in whose district Aurora was located, was instructed to go to the scene of the accident and make inspection and repairs to the damaged signal. He proceeded as directed and determined that the wig-wag could not be repaired immediately. Claimant was instructed to remain at the crossing furnishing flag protection.

An Extra Gang Laborer was instructed to go to Aurora and act as flagman to protect traffic at the involved crossing, going on duty at 5:30 P. M., February 16, and going off duty at 12:00 Midnight. Another Extra Gang Laborer protected the crossing from 12:01 A. M., February 17 to 7:30 A. M. that date. Claimant again furnished flag protection while signal gang made necessary repairs to the wig-wag.

It is the position of the Brotherhood that the Carrier violated the current Signalmen's Agreement, particularly the Scope, when it used employes not covered by that Agreement to relieve the Claimant and protect a grade crossing that was normally protected by an automatic signal, and the Carrier contends that the Scope Rule cannot be held to reserve to Signal Department employes work in connection with the flagging of a crossing in circumstances obtaining in this docket.

The record indicates that the general practice on the property has been to assign flagging duties at crossings to Maintenance of Way employes when no signal work was being performed by signal forces. We hold the confronting Scope Rule to be ambiguous in that we cannot find that the act of flagging, per se, is construction, reconstruction, installation, maintenance, testing, inspecting or repair. Thus holding, we find the practice to be controlling, the Agreement was not violated, and the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.