



Award No. 14465
Docket No. SG-12486

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 and continues to violate the current Signalmen's Agreement, effective April 1, 1947, reprinted (including revisions) April 1, 1958, when it failed and/or declined to apply the Scope Rule of the Agreement, by not assigning recognized signal work, such work being that performed by Track Department employees in the placing of wire across the rails to shunt track circuit while operating a track liner, to employees of the Signal Department. This work was done on November 16, 17, 18, and 19, 1959, between stations Dexter and Dougren, Portland Division.

(b) Mr. D. G. Meyers, senior furloughed Signalman, be allowed eight (8) hours at the Signalman's rate of pay for the following days, November 16, 17, 18, and 19, 1959, and for any days that the track forces are used to put a shunt on the track while using this equipment where the shunt is used. [Carrier's File: SIG 152-69]

EMPLOYEES' STATEMENT OF FACTS: The instant claim is based on the Carrier's action of requiring and/or permitting employees who hold no seniority or other rights under the Signalmen's Agreement to place a shunt wire across the rails to shunt a track relay in the vicinity of where track forces were operating heavy machinery on the track. Under date of November 8, 1959, Mr. R. T. Bates, Local Chairman, wrote the following letter of protest to Mr. C. T. Ray, Division Engineer:

"This is a letter of protest of the practice of Track Forces placing a shunt on track circuits of the Signal Department, while operating heavy machinery on track.

The particular case being that of a track liner being used on the Oakridge Roadmasters District. In investigating this condition,

- (5) The track is then moved horizontally in either direction by hydraulic cylinders which push at the base of the rails.

The lining operation outlined above completely removes the machine from the left rail thereby breaking the shunt circuit. Then, on completion of the lining operation the reverse sequence lowers the wheels and places the track liner back on the rails, again completing the shunt circuit. Since the lining sequence requires less than a minute to complete, as previously shown, and the machine lines 1,000 to 2,000 feet of track per hour, each time the track liner is spotted and operated to align the track, the shunt circuit is broken and the coding equipment is activated.

4. The frequent breaking of the shunt circuit due to the normal operation of the track liner creates unnecessary operation of the coding machines, and in order to prevent such useless overworking of said machines, the track force was required to place a shunt (a wire with set-screw clamps at each end to enable the wire to be secured to the rails to make an electrical circuit) on the track circuit in which the machine was operating.

5. Members of the track force were not required to nor did they at any time make any test to determine whether the shunt functioned properly, because the only result that would have obtained from an imperfect shunt would have been the unnecessary and useless working of the coding machines. Signalmen have never placed shunts in these circumstances.

6. Correspondence which passed between the Local Chairman and carrier's Division officers in connection with this claim is reproduced as Carrier's Exhibit "A"; and correspondence passing between the General Chairman and carrier's Assistant Manager of Personnel is reproduced as Carrier's Exhibit "B".

(Exhibits not reproduced.)

OPINION OF BOARD: This controversy arises from the shunting of track circuits by Track Department employees instead of signalmen while operating a track liner during specified days in November 1959. The question for determination is whether the placing of a temporary shunt on a track circuit while a track liner is in operation constitutes signal work within the scope of controlling Agreement between the Carrier and Employees of the Signal Department. Maintenance of Way employees placed temporary shunt wires between the rails by fastening the wire to the base of each rail with a set screw attached to the shunt, thereby preventing intermittent signal changes.

The Organization claims this is work belonging to Signalmen under the "Scope Rule" of their Agreement. Organization contends that the sole purpose of the shunt was to protect the signal system during the operation of the track liner and that this class of work is clearly reserved to Signal Department employees under the Agreement and applicable Awards of this Board. (Award 3688)

In the first instance, Carrier contends that the claim should be dismissed because it is vague and indefinite and further that proper notice was not given to a necessary and interested party, the Brotherhood of Maintenance of Way Employees. The record discloses that Carrier failed to object to the indefiniteness of the claim while the dispute was considered on the property

and the Board has no authority to consider new matters. Moreover, the record contains probative evidence clearly showing that the dispute was properly brought to the attention of all interested parties, including the Maintenance of Way Employees. Therefore, we find these contentions without merit.

With respect to the merits of the dispute, Carrier contends that the placing of a temporary shunt on a track circuit during machinery operation does not constitute signal work falling within the scope of the controlling Agreement to be performed exclusively by employees in classes within the Signal Department. Carrier asserts that the placing of temporary shunts on rails in conjunction with machinery work on the track or rails has never been recognized as being the exclusive work of signalmen and that the practice of applying shunts by employees other than signalmen antedates the controlling Agreement. The Scope Rule in the Agreement before us reads:

"(a) This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, detector devices, connected with signal systems, including centralized traffic control systems, car retarder systems and hot box detectors and car counting devices when used in connection therewith, dragging equipment detector devices, electric switch lamps, and all other work generally recognized as signal work performed in the field or signal shops."

It is clear that the application of temporary shunts in the instant dispute was an adjunct to the work being performed with machinery by track employees. Shunts were used to prevent the intermittent changing of signals during the operation of machinery. In fact, the shunt cord supplemented the shunt partly provided by the machines themselves. Necessary precautions for protecting roadway machines against train movements were accomplished by other means such as placing switches in hand-throw positions at both ends of the working limits and obtaining clearance from the dispatcher. Therefore, it is evident that the disputed work is not encompassed with the specific criteria of the Scope Rule and the burden is upon the Organization to show through probative evidence that such work is generally recognized as signal work.

The Organization asserts that the disputed work was necessary to protect the signal equipment and that the purpose of the work performed falls within the province of the signalmen. Organization has offered in evidence the Carrier's Operating Rules in support of its position but has failed to present any evidence concerning their application by the Carrier which would support the instant claim. Specifically, the Organization has failed to prove that Carrier interpreted its rules in the same manner as the Organization suggests is proper.

No other evidence was offered by the Organization in support of its contention that the temporary shunting in issue had been recognized as being the exclusive work of signalmen throughout Carrier's property and the

Carrier has denied such exclusiveness. Moreover, the Organization has not denied Carrier's assertions that other employees have normally performed such work.

A careful analysis of the Awards cited by the parties convinces us that Awards 5428 and 11595 are relevant and controlling in this case. The application of temporary shunts was merely an adjunct to the operation of a machine performing maintenance work and the Organization has failed to show through "tradition, custom and practice" the work involved belonged exclusively to them.

In view of the foregoing, this Claim will be denied.

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 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 27th day of May 1966.