Award No. 18384
Docket No. SG-18655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company that:

(a) The Carrier violated and continues to violate the intent and provisions of the current Signalmen's Agreement, particularly the Scope Rule and memorandum of agreement effective November 1, 1962, when it assigned and/or allowed persons not covered by the Signalman's Agreement and holding no seniority in this department to apply shunt wires at MP. 296.70 to control signals 296-1 and 296-2 in order to govern the movement of trains and refused this generally recognized signal work to accrue to signalmen.

(b) The Carrier now be required to compensate Mr. W. H. Barnes, presently Maintainer-Helper, Waverly, New York for 8 hours per day at Signal Maintainer's rate and all hours over 8 per day at time and one-half Signal Maintainer's rate worked by persons not covered by the current Signalman's Agreement, performing Signalman's work on the following dates: May 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1968; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 1968; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 1968.

(c) Should this violation persist, continue, or prevail, this will be considered as a continuing claim as provided in Article V of the August 21, 1954 Agreement.

(Carrier's File: 166-Sig.)

EMPLOYES' STATEMENT OF FACTS: This dispute arose because the Carrier assigned an employe not covered by the Signalmen's Agreement to use a track shunt to control signals 296-1 and 296-2, governing the movement of trains over a section of the Railroad over which a highway bridge was being constructed.

or dropping something on the crossing. The shunt wires were used only on May 23 to set the signals in stop position.

Claim was timely instituted and denied at all levels of appeal. Copies of pertinent correspondence is attached as Carrier's Exhibits A through J.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 20, 1968, Carrier assigned a train service employe to provide protection for the movement of trucks and other heavy equipment of a contractor over the tracks of Carrier at a temporary private crossing. The contractor was engaged in constructing a highway bridge over Carrier's tracks and right of way. The train service employe's responsibility was to regulate the movement of the contractor's vehicles over the tracks in the same manner that a crossing watchman would do where one is employed. Specifically he was to halt vehicular and other traffic over the tracks when a train approached. Thus, the primary means by which protection was to be provided to the contractor's and Carrier's equipment was the regulation of vehicles, not trains.

Such an arrangement, however, would have been inadequate in the event that it became impossible to keep the tracks clear by the regulation of vehicles alone, such as, if a vehicle became stalled on the tracks or if heavy debris obstructed the tracks. Accordingly, it was necessary to provide the assigned employe with a means of regulating the movement of trains if such emergency situations occurred. Hence, the employe was provided with a "shunt" to be used if it became necessary to stop the movement of a train in order to avoid an accident on the section of track where the temporary crossing was located.

A brief and rudimentary description of a "shunt" and its function is appropriate here. The signal system which regulates the movement of trains incorporates track rails as an integral part of its electrical circuitry. Energizing both track rails with current enables the signal system to detect electrically the presence of a train on a particular portion of track. The train, through its wheels and axle, causes a sort of "short circuit" by making a metallic connection between the rails, thereby activating signals which will stop other trains from entering that portion of track. Signals can be activated to give the same indication by use of a "shunt", a metallic cable fitted with screw connections at each end to attach to the rails. Therefore, by attaching the ends of the shunt to the rails, a given portion of track can be protected by causing the signals to indicate that the track is occupied.

In this case, the shunt which was provided the employe assigned to the crossing was, as stated above, to be used in the event that it was necessary to stop trains to protect the crossing. One end of the shunt was attached to one rail and the other end was left unattached, to be attached to the other rail when needed to signal approaching trains. (Claimant contends that the original arrangement called for having the shunt continuously attached, to be removed when scheduled trains were approaching, but the distinction is not material in light of our analysis and findings hereinafter enunciated.) Claimant maintains that Carrier violated the Scope Rule of the Signalmen's contract by assigning the work of applying the shunt to an employe not covered by that agreement. He argues that this Board's prior interpretations of the Signalmen's Scope Rule place the work in question within that

contract. Carrier maintains that the Signalmen's Scope Rule does not specifically cover the work involved herein and that the prior decisions of this Board clearly refute Signalmen's claim of exclusivity with respect to the work. Claimant and Carrier have each cited several decisions of this Board in support of their respective positions.

There have been numerous decisions of this Board in the past several years dealing with the application of Signalmen's Scope Rule to the task of controlling signals by shunting the track circuit, and, indeed, these past cases are divided between those which sustain and those which deny prior claims to the work. These cases are not hopelessly split and inconsistent, however. There is a pattern to these cases which delineates distinctly and logically between the circumstances under which the Signalmen's Scope Rule will be held to include the work of applying a shunt to the track circuit and those which will be considered beyond the intended coverage of the rule.

Cases which have held that Signalmen were not entitled to the work of applying a temporary shunt involve situations where the primary instrumentality of effecting the "short circuit" is equipment which operates on the rails. Where maintenance crews operate equipment such as cribbing machines, tamping machines, track liners and the like, the equipment itself actuates the signals in the same manner that a train would do. Shunts are ordinarily used as a back-up in those cases or to provide intermittent protection while the equipment is being repositioned or removed.

Those cases which have held that signalmen were entitled to the work fall in two categories, (1) where the sole activity performed at the site where the shunt was applied and the sole reason for being at the site was the application of the shunt, and (2) where the shunt was used as the sole method of protecting a particular block of track to safeguard other work being done. An example of the first would be where a shunt is applied solely to test the readiness or efficiency of train crews. An example of the second would be where maintenance crews working on the line had no equipment which operated on the rails or had rail equipment not designed to reliably conduct current between the rails.

In our view, the instant case is most closely allied with the line of decisions holding that the work in question is covered by the Signalmen's Scope Rule. Here the man assigned was the only employe of the Carrier at the site. The only business of the Carrier being conducted at the site was the protection of its equipment and the contractor's equipment crossing its tracks. The sole purpose of assigning an employe was to regulate trains by electrically actuating the appropriate signals when and if needed and the shunt was the sole means of actuating those signals. The fact that the shunt may never have been needed is of no consequence. The considerations which prompted Carrier to provide a shunt wire even though it may not have been needed should have been sufficient to necessitate the assignment of the proper qualified man to apply the shunt even though his skill may never have been needed or used.

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

Carrier violated the Scope Rule by assigning an empleye not covered by Signalmen's Agreement to the work involved.

AWARD

Claimant to be paid for difference between amount of compensation he would have earned had he been assigned to disputed job on each day that the job was worked and amount he was paid for such days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.

CARRIER MEMBERS' DISSENT TO AWARD 18384, DOCKET SG-18655
(Referee Rosenbloom)

The Majority's decision in the instant case is not only palpably wrong, but is contrary to **Award 5428** (Donaldson), involving these same parties, rules and issue, as well as the recognized practice on this property.

In the instant case on May 20, 1968, Carrier assigned a train service employe to provide protection for the movement of trucks and other heavy equipment of a contractor over the tracks of the Carrier at a temporary private crossing. The train service employe was furnished a portable telephone to enable him having a current line-up of trains to be operated, and a walkie-talkie radio to enable him to communicate with crews of trains in the vicinity.

On May 23, 1968, the train service employe was furnished with "shunt" wires to enable him to quickly place westbound and/or eastbound signals Nos. 296-1 and 296-2 in stop position **in the event of an emergency requiring such action.** One end of a "shunt" wire was attached to one of the rails in each track and the other end of the wire was left unattached, except on date of May 23 when the shunt wires were furnished, tested, and the employe instructed how to use them.

Claim was progressed for 8 hours per day at Signal Maintainer's rate and all hours over 8 per day at time and one-half Signal Maintainer's rate worked by persons not covered by the current Signalmen's Agreement on several days beginning on May 20, through June and July.

The Majority stated in his "Findings":

"Carrier violated the Scope Rule by assigning an employee not covered by Signalmen's Agreement to the work involved."

and in the "Award" it was held:

> "Claimant to be paid for difference between amount of compensation he would have earned had he been assigned to disputed job on each day that the job was worked and amount he was paid for such days."

although it was not refuted that the "shunt" was applied on one date; namely, May 23, 1968.

Award 18384 is contrary to the system-wide practice on the property, as well as **Award 5428** involving these same parties, Scope Rule and issue.

Award 5428 has put this issue to rest years ago. Therein we held, in part:

> "* * * In interpreting the general language contained in the second emphasized phrase, we must resort to custom and practice to ascertain if the work in question has been generally recognized as signal work. * * * In the instant case the shunt was used simply as an extra safety precaution; the principal burden of protecting the tracks during the operation in question rested upon the flagman. If this was not so, meter testing after the application of the shunt would undoubtedly be necessary and the skill of a signalman might well be required in connection with the use thereof. But no such meter is used on this property.
>
> "* * * The work of shunting has long been done by Maintenance of Way employes on this road. If the custom and practice were to be changed, opportunity to do so came with the negotiation of the present Signalmen's Agreement in 1944.
>
> "* * *
>
> "We cannot say from the record before us that through tradition, custom and practice the work in question belongs exclusively to Signalmen."

For these reasons, among others, we dissent.

R. E. Black

H. F. M. Braidwood

P. C. Carter

W. B. Jones

G. L. Naylor

ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 18384, DOCKET SG-18655

We concur in Award 18383 in its finding that the Carrier violated the Agreement; in this respect the Award is correct. Our concurrence is, how-

ever, not to be taken as supporting the formula applied in determining the extent to which the monetary portion of the claim was allowed.

One of the purposes of a Labor Agreement is to reserve the work of a craft to the men of the craft, and in its disposition of that part of the claim asserting a violation of the controlling Agreement, Award 18384 obviously concurs. We submit that it follows that the Award in requiring the Carrier to pay only the "difference between amount of compensation he would have earned * * * and amount he was paid" is contradictory of its finding of a violation in that it preserves to the craftsman only a portion of the work reserved in toto by their Agreement.

s/ W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member

REFEREE'S ANSWER TO DISSENT TO AWARD 18383, DOCKET SG-18655

In its dissenting opinion, the minority places heavy reliance on the fact that the train service employe assigned to protect the portion of track involved herein was furnished with a walkie-talkie, a means of direct communication between himself and train crews operating in the area. Such assertions are not supported by the record herein. We do not speculate on whether the result herein would have been different had the record contained such evidence, but the fact is that the record is barren of any evidence to this effect.

S/ Melvin L. Rosenbloom, Referee

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