Award No. 18615
Docket No. SG-19008

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

> On behalf of Signal Maintainer P. E. Kirkpatrick for two calls of 2 hours and 40 minutes each at his overtime rate of pay account not called to bond rail changed out by track forces at two locations on his territory December 19, 1968.

(Carrier's File G-357--18; G- 357-12)

EMPLOYES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute seeks payment on behalf of Signal Maintainer P. E. Kirkpatrick for two separate calls because of two incidents of track forces changing out rail. This occurred in signalled territory; i.e., when the track forces removed the rails, they "opened" the track circuit, then renewed the rail without making any attempt to arrange for a signal employe to be present to remove the bond wires from the old rail and replace them after the rail was renewed.

Claimant Kirkpatrick discovered these conditions while checking track circuits on December 19, 1968. As a consequence, the Organization's Local Chairman initiated a claim on his behalf for two calls under Rule 18(a) of the Signalmen's Agreement. During the handling of this dispute on the property, Carrier's attention was also directed to the fact we contend there was a violation of the Scope Rule when persons not covered by the Signalmen's Agreement performed signal work.

There is an agreement between the parties to this dispute bearing an effective date of February 1, 1967, which is, as amended, by reference thereto made a part of the record in this dispute. As the Scope and Rule 18(a) were cited during the handling of this dispute on the property, they are quoted here for ready reference:

> "RULE 1. SCOPE.
>
> This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the

The Local Chairman's initial claim, cited above, is Brotherhood's Exhibit No. 1, attached hereto. Further exchange of correspondence on the property, up to and including the General Chairman's appeal to the highest officer of the Carrier designated to handle such disputes, is Brotherhood's Exhibit Nos. 2 through 7.

Following the appeal to Mr. Clark (Brotherhood's Exhibit No. 7) the dispute was discussed in conference November 25, 1969. The Organization's Vice President T. H. Gregg participated in that conference. On November 28, 1969, Mr. Gregg wrote to Mr. Clark, citing Third Division Awards dealing with the subject matter of the instant dispute. Copy of that letter is Brotherhood's Exhibit No. 8.

In a letter dated December 3, 1969, Mr. Clark confirmed the November 25, 1969 conference, then stated:

> "As was explained to you in the conference, it is our position that the Agreement was not violated and the claim was respectfully declined in its entirety."

The matter was again discussed in conference July 28, 1970, at which time additional information was furnished by the Organization in support of the claims. Included was a statement signed by Claimant Kirkpatrick and five other signal employes, and a letter from one Carrier official to another. The Carrier's letter, dated March 10, 1970, is attached hereto as Brotherhood's Exhibit No. 9. The signal employes' statement, signed on May 20 and 22, 1970, is Brotherhood's Exhibit No. 10.

Following the July 28, 1970 conference, Mr. Clark again denied the claim in a letter dated July 29, 1970, copy thereof attached hereto as Brotherhood's Exhibit No. 11.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The dispute here involved concerns the following facts:

In a routine check of track circuits in Boyles Receiving Yard on December 19, 1968, Signal Maintainer P. E. Kirkpatrick found in Track No. 2 that fails had been cut account of bucked track and the circuit had not been rebonded.

Also on this same date Mr. Kirkpatrick found a broken rail in Track #6, Boyles Receiving Yard, that had been changed out and the circuit had not been rebonded.

Employes alleged that Rule 18(a) of the agreement was violated and filed claim. Pertinent correspondence exchanged in connection with the claim is attached and identified by Carrier Exhibits "AA" through "QQ."

There is on file with the Third Division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In the handling of the dispute on the property, the Petitioner contended that while checking track circuits in Boyles Receiv-

ing Yard on December 19, 1968, Claimant found in track No. 2 that rails had been cut account of bucked track and that the circuit had not been rebonded; and also on the same date that he found that a broken rail had been changed out in Track No. 6 and the circuit not rebonded. The Carrier did not dispute the fact that rails had been changed out and that the circuits had not been rebonded, but contended that maintainers were assigned to the territory 24 hours per day, 7 days per week, and it was their responsibility to bond tracks that were repaired on their tour of duty. The Petitioner submitted statement of six signal maintainers at Boyles to the effect that they were not notified ahead of time that rail work was going to be done in the territory and were not notified after the rail work had been completed.

There have been a number of prior disputes before the Division, involving the same parties, in connection with Maintenance of Way employes changing rail in signal territory without signalmen being present or notified. They were disposed of by Awards 6584, 11515 and 14424, all of which sustained claims that signal employes should be called when rails are changed out. The facts in our present docket do not warrant a different conclusion. Any contention that the Petitioner failed to show that employes of the Signal Department did not perform the work is answered by the fact that the circuits had not been rebonded as contended by the Petitioner and not refuted on the property, and acknowledged by the Carrier in its submission.

We will sustain the violation of the Agreement. However, as both alleged violations occurred on the same day, and in the absence of any showing that a signalman, if called, could not have bonded both circuits while on duty under one call, we will award that Clamiant be allowed one call.

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

That the Agreement was violated to the extent shown in Opinion.

AWARD

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.