

365
Award No. 18915
Docket No. SG-19315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) On or about March 5, 1970, the Carrier violated the current Signalmen's Agreement, in particular the Scope, when it assigned and/or permitted Mr. M. L. Clifton, Trainmaster, to perform Signalmen's work during an "efficiency test" performed on Eastward Extra No. 959 (258) at Marshalltown Automatic Interlocking.

(b) The Carrier now be required to compensate Mr. L. W. Allee, Signal Maintainer, a "call" (2 hours and 40 minutes) at rate and one-half for this violation. (Carrier's File: 79-3-71.)

EMPLOYES' STATEMENT OF FACTS: On or about March 5, 1970, Carrier assigned and/or permitted Trainmaster M. L. Clifton to place one or more signals in "stop" position for the purpose of performing an "efficiency test" on a train crew.

Under date of April 3, 1970, the Brotherhood's Local Chairman presented a claim on behalf of Signal Maintainer L. W. Allee for a minimum "call" (two hours and forty minutes at one and one-half times his pro rata rate of pay), on the basis such work belongs to the signalmen's craft and has been recognized as such by Third Division Award Nos. 11507 and 11508. The Local Chairman also pointed out that a former Vice President Personnel, Mr. G. F. Stephens, recognized a signal employee should be used for such work. Copy of the Local Chairman's initial claim is attached hereto as Brotherhood's Exhibit No. 1.

Further exchange of correspondence on the property, which shows this claim was handled in the usual manner on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, is Brotherhood's Exhibits Nos. 2 through 7.

There is an agreement in effect between the parties to this dispute, bearing an effective date of June 1, 1951, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

understanding that he wanted the carrier either to use hourly-rated men all the time on these efficiency tests, or in the alternative, to refrain from requiring monthly-rated employes represented by the Brotherhood of Railroad Signalmen, that is, District Foremen and Traveling Maintainers, to work on such checks outside their normal working hours. The General Chairman did not contend that the work came within the scope rule of the Signalmen's agreement. The carrier refused to agree with the former General Chairman's request of May 3, 1951. Copies of the former General Chairman's letter of May 3, 1951, and the Vice President-Personnel's reply of June 12, 1951, are attached as Carrier's Exhibits A and B.

However, it was not long after the handling of this protest that the Operating Department discontinued the practice of having a Signal Department employe present when an efficiency test of operating employes involved compliance with signals. The practice for many years has been that in conducting efficiency tests concerning compliance with signals, the Division Officer conducting the test changes the indication of the signal by shunting the track with a wire or, as in the present case, by opening a switch or removing a derail which results in a restricted signal indication. Then, if it is determined that the testimony of a Signal Department employe as to the operation of the signal is desired, he is instructed to inspect the signal and check its operation after the efficiency test, and then testify as to the operating condition of the signal at the investigation.

The efficiency test in question in this case was conducted in accordance with the practice that has been in effect for about 20 years.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as a result of Carrier's Ass't. Trainmaster, on March 5, 1970, reversing a derail within the automatic interlocking plant, for the purpose of showing a "stop" signal in connection with an efficiency test being given to train and engine crews of Train No. 258 (Extra 959 East). The Organization is contending that such work comes under the Signalmen's Agreement and belongs to Signalmen.

The Organization's position is clearly set out in General Chairman Gerth's letter of June 4, 1970 to Carrier's Director of Labor Relations, W. J. Fremon, when Mr. Gerth, in part, stated:

"We contend that the use of a derail, or other device for the purpose of shunting a track circuit which affects the normal operation of an automatic signal is signal work as covered by the scope. Track circuits are the very foundation of an automatic railway signal system so there should be no doubt in anyone's mind as to whether or not a track circuit is covered by the scope."

Carrier's defense to this claim is that its said Ass't. Trainmaster, Mr. Clifford, operated a hand-throw derail which caused the home signal at the automatic locking plant to go to or remain at their more restrictive position; that the purpose was to observe the action of the train crew on approaching the restrictive signal, and the test had nothing to do with the testing of signals; that the operation of hand-throw signals is not now and never has been work reserved to signalmen, inasmuch as such derails are thrown regularly by train crews, whether or not such derails are within interlocking limits; that the efficiency test in question was conducted in accordance with the practice that has been in effect for about 20 years.

The Organization has cited a number of Awards in support of its position that the work here in dispute belongs to Signalmen. Among them is Award No. 12627, where a traveling Engineer and an Ass't. Trainmaster made efficiency tests and caused a signal to display a stop by a standard shunt wire placed across the rails ahead of the signal and caused another signal to display a stop by removing the derail ahead of the signal thus shunting the track. This Board in said Award No. 12627 concluded:

"The Traveling Engineer and the Assistant Trainmaster are supervisory employees. They were engaged in making efficiency test. They were not engaged in track work which necessitated temporary shunting of a signal system circuit. In shunting the signal circuit for efficiency test purpose, they violated Rule 1 - Scope."

We find said Award No. 12627 analogous and controlling in the determination of this dispute. We reach this conclusion after having examined this Board's Award No. 15813, strongly relied on by Carrier, in which Award this Board found that the Organization failed to present a preponderant body of evidence to demonstrate that the Carrier's official, in placing a shunt wire across the rails for the purpose of conducting an efficiency test of a train crew, did work that was generally recognized as signal work.

We find that the work here in dispute relates to the functioning of automatic signals and therefore comes within the duties of the Scope Rule of the Agreement to maintain the signals; and the Agreement was thus violated by Carrier in this instance. See Award Nos. 3688, 11507 and 18334. For the aforesaid reasons, we must sustain the claim.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.

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