

 Award No. 19073
Docket No. SG-19228

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

On behalf of Signal Maintainer R. R. Retzlaff for payment of two hours and forty minutes at the overtime rate for September 14, 1969.
(Carrier's File: Case F-1062)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute, bearing an effective date of September 1, 1949, as amended, which is by reference thereto made a part of the record in this dispute. Pertinent to this dispute is the Scope Rule of that Agreement, which is quoted here for ready reference:

"SCOPE

This agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal Department (except clerical and engineering forces and supervisory forces above the rank of foreman, engaged in the installation, maintenance and repair of signals, interlocking plants, highway crossing protection, signal lines, wayside automatic cab signal equipment, car retarders, centralized traffic control systems, signal shop work and such other work generally recognized as signal work.

It is understood that the following classifications shall include all of the employes performing work enumerated in the scope of this agreement."

A basic issue before this Board in this dispute is whether or not Carrier violated the Scope Rule when an official (Special Police Officer) not classified in or covered by the Signalmen's Agreement made a temporary repair to a track circuit to clear highway crossing signals after investigating a report those signals were operating continuously. Our basic contention is that investigating and clearing signal trouble is signal work which accrues to Signal Employees under the Scope Rule.

in connection with the continuous operation of the crossing signals thereat. Trainmaster Stewart in his decision not to have any repairs made to the broken rail on that particular night, made arrangements to take the track out of service pending inspection and repairs on the following morning.

On the morning of September 15, 1969 permanent repairs were made to the track on the railroad crossing at Humboldt Avenue by Carrier's Maintenance of Way Track Forces, who replaced the broken rail, and by Claimant Retzlaff who bonded the new rail to complete the circuit between the rail and crossing signal thereat.

The broken rail at the crossing on Humboldt Avenue created an open circuit which in turn caused the crossing signals to operate in a continuous manner. The insertion of a nail in the break of the broken rail completed the circuit between the rail and crossing signals, thereby temporarily suspending its operation pending repairs to the broken rail.

No maintenance work of any kind was performed by either the special police officer who was assigned to investigate the report received in connection with the crossing signals or by Trainmaster Stewart.

Attached hereto as Carrier's Exhibits are copies of the following:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations to Mr. L. T. Davies, General Chairman, under date of February 24, 1970Carrier's Exhibit "A"

Letter written by Mr. L. W. Harrington to Mr. L. T. Davies under date of April 28, 1970Carrier's Exhibit "B"

Letter written by Mr. L. W. Harrington to Mr. L. T. Davies under date of May 28, 1970.....Carrier Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, September 14, 1969, Carrier received a report that highway crossing signals were operating continuously. Carrier had a Railroad Special Officer go to the crossing and investigate. While so investigating, he discovered a broken rail. He temporarily repaired the signals by making an insertion in the break (the Organization claims a spike was inserted while the Carrier alleges it was a nail). Permanent repairs were made the next day.

The Organization contends that investigation and clearing of signal trouble is signal work which accrues to Signal employees under the Scope Rule, and Carrier violated the Agreement when it failed to call Claimant, an employee covered by the Signalmen's Agreement, to make the necessary inspection and repair.

Carrier counters by asserting that the work in question is not reserved exclusively to Signalmen; and that the Special Officer was merely performing the function of his own Department.

While there can be no doubt that Carrier has the right to retain special officers to perform investigating functions on its property, when it became

apparent to Carrier that the signal in question was not operating properly, a Signaller, not the special officer should have been sent to investigate and correct the malfunction. The Scope Rule reserves to employees in the Signal Department the maintenance and repair of signals. When Carrier was informed that the signal in question was operating continuously, it then became apparent that repair work of some kind would be necessary. It became incumbent upon Carrier at that point to call a Signaller to investigate and make any necessary repairs to restore the signal to normal operation. When it failed to do so, Carrier completely disregarded the Scope Rule of the applicable Agreement, which reserves to Signalmen the work in question. Consequently, the claim will be sustained on behalf of Claimant, an employee covered by the Signalmen's Agreement, and who was available for 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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.