

Award No. 19186
Docket No. SG-16007

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claims of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway (Chesapeake District) that:

Claim No. 1 —

(a) Carrier violated the current Signalmen's Agreement, in particular Rules 1 (Scope) and 25, when it used other than the regular assignee on January 18, 1965, to investigate what caused #41 switch to not indicate in the reverse position.

(b) Carrier be required to compensate Signal Maintainer B. J. McComas, regular assignee to the K. V. Cabin signal maintenance territory, four (4) hours (minimum call) at his applicable rate of pay for the violation as defined in part (a) of this claim. (Carrier's File: SG-185)

Claim No. 2 —

(a) Carrier violated the current Signalmen's Agreement, in particular Rules 1 and 25, when it used other than the regular assignees to investigate the cause of #97 crossover (switch) failing to indicate in the reverse position. Switch referred to herein is located on the Big Sandy Jct. territory.

(b) Carrier be required to compensate Signal Maintainer C. R. Kirtley and Asst. Signal Maintainer T. J. Keelin, regular assignees to the Big Sandy Jct. signal maintenance territory, at their respective applicable rates of pay, in the amount of four (4) hours (call) for the violation as defined in part (a) of this claim. (Carrier's File: SG-186)

Claim No. 3 —

(a) Carrier violated the current Signalmen's Agreement, in particular Rules 1 (Scope) and 25, when it used other than the regular assignee on January 10, 1965, to investigate what caused #51 crossover (switch) to not indicate in the reverse position.

(b) Carrier be required to compensate Signal Maintainer H. E. McComas, regular assignee to the Handley signal maintenance territory, in the amount of four (4) hours at his applicable rate of pay for the violation as defined in part (a) of this claim. (Carrier's File: SG-187)

Claim No. 4 —

(a) Carrier violated the current Signalmen's Agreement, in particular Rules 1 (Scope) and 25, when it used other than the regular assignee on January 10, 1965, to investigate the cause of switches #181, #137 and #145 failing to indicate in the reverse position. Switches referred to herein are located on the D. K. Cabin signal maintenance territory.

(b) Carrier be required to compensate Signal Maintainer J. H. Butler, regularly assigned Signal Maintainer to the D. K. Cabin territory, for the comparable time that another was used to perform the work referred to in (a) of this claim; such compensation to be at his applicable rate of pay. (Carrier's File: SG-188)

EMPLOYEES' STATEMENT OF FACTS: This is a combination of four claims that were handled separately on the property. They are combined herein because they involve the same issue—Carrier's failure to use regularly assigned signal maintenance forces to perform work at power switches that failed to indicate in the reverse position. These power switches are maintained by signal forces. Employees who performed the disputed work hold no seniority or other rights under the Signalmen's Agreement. The claim in each instance is on behalf of the signal maintenance employee(s) assigned to the signal maintenance territory on which the disputed work was performed. Claimants were available for the work but were not called or used.

Claim No. 1, on behalf of Signal Maintainer B. J. McComas, involves a switch failure on his signal maintenance territory on January 18, 1965, at 8:00 P. M. Pertinent correspondence exchanged on the property is attached hereto as Brotherhood's Exhibit Nos. 1-A, 1-B, 1-C and 1-D.

Claim No. 2, on behalf of Signal Maintainer C. R. Kirtley and Assistant Signal Maintainer T. J. Keelin, involves a switch failure on January 28, 1965, at 9:20 P. M. Pertinent correspondence exchanged on this claim is Brotherhood's Exhibit Nos. 2-A, 2-B, 2-C and 2-D.

Claim No. 3, on behalf of Signal Maintainer H. E. McComas, involves a switch failure on January 10, 1965, at 6:00 P. M. Pertinent correspondence exchanged on this claim is Brotherhood's Exhibit Nos. 3-A, 3-B, 3-C and 3-D.

Claim No. 4, on behalf of Signal Maintainer J. H. Butler, involves a switch failure on January 10, 1965, at 5:30 P. M. Pertinent correspondence exchanged on this claim is Brotherhood's Exhibit No. 4-A, 4-B, 4-C and 4-D.

There is an agreement in effect between the parties to this dispute, bearing an effective date of August 16, 1946, reprinted May 16, 1958, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is already on file with the Third Division, National Railroad Adjustment Board, General Agree-

to determine what the trouble was. Signal Maintainer Butler found that there was nothing wrong with the signal or interlocking system. They were functioning perfectly. The whole trouble was that in removing the snow and ice from this particular switch, the trackmen had not removed all of it. Enough remained to prevent the switch points from going to full reverse position and permit the switch to indicate reverse at the control machine. As soon as the additional snow and ice had been removed, the switch indicated perfectly in reverse position, and this switch was used by Train No. 3 in regular manner without further difficulty of any kind.

Switches Nos. 181, 137, and 145 similarly did not indicate reverse at the DK Cabin control machine on this occasion, and the trackmen were told to give preference to sweeping the new fallen snow from these switches. As soon as the trackmen did their customary snow sweeping from these three switches, the signal system continued its perfect working and indicated at the control machine that the switch points had gone over to reverse position in full and safe manner. The trackmen did nothing at these switches beyond the customary or routine snow sweeping.

Carrier's Exhibit 13 is statement of Section Laborers A. L. White and Earl B. Johnson, and Carrier's Exhibit 14 is statement of Signal Supervisor Kirtz. When the claim had been appealed and Operator E. R. Adkins was asked to make statement as to his handling, Adkins said the matter had occurred a good while prior thereto and he could not remember the details in a manner enabling him to make statement as to just what did occur, this accounting for no operator's statement in this case.

The facts having been stated, the Carrier will now outline its position.

(Exhibits not reproduced.)

OPINION OF BOARD: Disputes involving removal or cleaning or sweeping of snow and ice from switches are not new to this Board. The parties hereto have been involved in the following cases where such removal of snow and ice from switches gave rise to the claim: Award 10417; (Sheridan); 10422 (Dolnick); 11759, 11760, 11761 and 11762 (Dorsey). All but one of these claims filed by Petitioner herein were denied. Award 11761 sustained Petitioner's claim that its agreement was violated because Carrier "called and used a section foreman on account of an electric switch failure." Carrier relies on the claims that were denied, among others on other properties, as well as its agreement with the Brotherhood of Maintenance of Way Employees to whose members the disputed work was assigned. Petitioner relies on Award 11761 as well as its Scope Rule and Rule 25 (Work outside of Assigned Hours). The Scope Rule reads in relevant part as follows:

"This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including * * *"

The Scope rule was the same in the aforementioned six cases. Petitioner contends further that Awards involving the same facts and agreements and the same parties are controlling and cites a series of awards holding to that effect. Carrier, in effect, contends that Award 11761 is not applicable to the facts herein. Intervenor, Brotherhood of Maintenance of Way Employees, agrees with Carrier and points out that a "switch failure" is not a "signal

failure" alleging that trackmen maintain "switches" while signalmen maintain "signals." The position of the Intervenor was elicited pursuant to Transportation-Communication Employees Union v. Union Pacific Railroad Company (385 U.S. 157) and its contract with the Carrier has been considered in so far as it bears on this dispute.

The parties are in essential agreement as to the facts. When the Operator learned from his control machine that certain switches would not go completely over or in the reverse position Trackmen who had been previously called out because of a heavy snow fall and were engaged in routine snow and ice removal were contacted and instructed to give attention to the switches which would not indicate in the reverse position.

Thus as to Claim No. 1, on January 18, 1965, when the Operator at KV Cabin found that No. 41 switch would not give the reverse indication he contacted the dispatcher who instructed the KV Operator to have the trackmen then at BS Cabin to come to KV Cabin 2.1 miles away to clean the switch. After the snow was removed from the switch points the switch operated properly and gave the proper indication on the interlocking machine.

As to Claim No. 2, on January 18, 1965, when the Operator at BS Cabin endeavored to use No. 97 switch he found it would not give the reverse indication on the control machine. Therefore trackmen were instructed to stop cleaning where they were and proceed to switch No. 97 which was needed for a passenger train due shortly. The trackmen swept the points clear of snow and the Operator could then use the switch in the normal fashion and the proper indications were reflected on the control machine.

As to Claim 3, on January 10, 1965, the Operator at Handley had occasion to use switch No. 51 and learned it was not going over to the reverse position. He notified the dispatcher and trackmen were called to sweep switch No. 51. When the snow was removed the switch operated normally and that fact was reflected on the control machine.

As to Claim 4, on January 10, 1965, the Operator at DK Cabin found that switches 181, 137 and 145 did not indicate in the reverse position on his control machine. Trackmen were told to proceed to these switches and clean them. Thereafter the proper indication was received on the control board and the switches operated properly.

Carrier concedes that if there had been work requiring Signalmen to be called out the claimants are the ones who would receive the calls.

Carrier states that the Operator knew what was causing the switch failure because of his experience and the fact that a heavy snow fall was involved. Carrier states that there was nothing wrong with the signal apparatus and that the indication received on the control machine was normal where switches cannot operate properly because of the presence of foreign objects, including snow, which prevent the switches from locking in either the normal or the reverse position. Thus Carrier states that the signal system was functioning properly. Carrier contends moreover that sweeping snow from switches is not reserved exclusively for Signalmen.

Petitioner contends that when a malfunction at the switches, as described above, was indicated on the control machine it was not up to the Operator to guess or to speculate as to the cause but to assign a Signalman to determine the trouble and to correct it.

The record reveals that the switches could not be operated normally until the snow was removed.

We have considered all the cases cited by the parties and find that Awards 10471, 10422, 11759, 11760 and 11762 are inapposite as there is no evidence in any of these cases of malfunctioning switches. We are unable to perceive the difference between this case and Award 11761 which reads as follows:

"The evidence supports the contention of the Petitioner that electric switch No. 13 failed to lock in the normal position, and that as a result a track foreman and one laborer were called out. After these employees cleaned snow and ice out of the switch points, the switch operated normally.

We find that the work involved was incidental to the proper operation of the interlocking and as such belongs to employees covered by the Signalmen's agreement. Award 4593."

The fact that trackmen were already out is immaterial. The work of removing snow and ice and for that matter other foreign objects (Award 13938) is reserved for Signalmen when it is done to insure the proper operation of signals, electrically controlled switches and interlockings. (Award 4593).

As uniformity in decisions involving the same Parties is highly desirable we feel bound by Award 11761 which is indistinguishable as to the facts and agreement.

Accordingly the claims will be sustained.

We have considered the submission of Brotherhood of Maintenance of Way Employees and the pertinent part of its agreement with Carrier and find that under the circumstances herein Carrier's failure to call Signalmen violated Signalmen's agreement.

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 has been violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.

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