

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20527
Docket Number SG-19957

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

(a) The Company violated the Scope, Article 1, Section 3, and Article 2, Section 23(h) of the current schedule Agreement when, on December 28, 1970, at about 4:47 P.M., it used an employe of the MofW Department (Trackman Frank Black) to make repairs to a "No Right Turn Signal" located at Washington Street, Warsaw, Indiana, and failed to use P. H. Houpt, Maintainer C&S, who was available.

(b) P. H. Houpt, Maintainer C&S, be paid 2.7 hours at the time and one-half rate of pay of his position as Maintainer C&S, because of the violations cited in claim (a) above.

(Carrier's File: System Docket No. 785 - Ft. Wayne Div. Case No. F-1-71)

OPINION OF BOARD: Claimant was a regularly assigned Signal Maintainer, with Monday to Friday hours of 7:00 A.M. to 3:45 P.M.; his territory included the Washington Street Crossing at Warsaw, Indiana. At approximately 4:00 P.M. on Monday, December 28, 1970, the Indiana State Police reported to the Block Operator at Warsaw Tower that a "No Right Turn" Signal at the Washington Street Crossing had been knocked from its pedestal by a car. It is not disputed that the signal, off its pedestal, not only interfered with vehicular traffic at the crossing but also constituted a hazard for safe movement of rail traffic on the main line at that point. The Block Operator called a Trackman, who lived nearby. The Trackman arrived at the scene at about 4:20 P.M., placed the signal, which was still operational, back on its pedestal and tied it down with a piece of wire. The signal was permanently secured to its pedestal by the C&S maintenance gang the next day. Claimant lived about 22 miles from Warsaw and his regular tour of duty ended at 3:45 P.M. that day.

Petitioner's position is that Carrier may not "farm out" work covered by the Agreement to persons not covered by the Agreement. It is contended that Carrier's use of the Trackman "to install and repair the signal back to its pedestal" was a violation of the Scope Rule of the Agreement. While agreeing that an emergency existed in the first instance, Petitioner argues that the emergency ceased to exist when the signal was removed from the flow of automobile traffic by the Trackman, but prior to its being placed on the pedestal.

Carrier's position is that first: the work performed by the Trackman was not maintenance work reserved to signalmen under the Agreement; and second: the Agreement was not violated because the work performed by the Trackman was emergency work.

We have heretofore defined an emergency as "an unforeseen combination of circumstances which calls for immediate action" (Award 10965). It seems clear that the circumstances involved in this dispute clearly fall within the definition of an emergency situation, and this is indeed not denied by the parties. In this Division and in the other Divisions of the Board it is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures. Contrary to the position taken by the Organization, we find that the entire incident fell into the category of emergency, not merely up to the removal of the signal from the track. With this conclusion, we do not find it necessary to deal with the other contentions raised by the parties; the claim does not have merit.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1974.

Dissent to Award 20527, Docket SG-19957

The Majority in this dispute has once again written into an Agreement an exception which the parties to the Agreement did not place there during their negotiations. We acknowledge that this is not the first instance in which that has been done, but we hold that compounding past error does not justify the error.

Dissent is registered.


W. W. Altus, Jr.
Labor Member