NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22767
THIRD DIVISION Docket Number SG-22142

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the current agreement between the (former Pacific Electric Railroad Company) and its employes represented by the Brotherhood of Railroad Signalmen effective September 1, 1949 (including revisions) particularly the Scope Rule and also misapplied Rules 22 and 23 of Article 5, when it allowed a signal gang to perform work that belongs to the Bonder and Welders.

(b) Mr. L. Sirus and Mr. A. Lozano be compensated for four (4) hours each at the time and one half rate for December 14, 1975." /Carrier file: SIG 152-359/

OPINION OF BOARD: The two claimants in this case occupy the classification of Bonder and Welder. This is one of about a dozen classifications covered by the Agreement. Another classification is that of Signalman. On Sunday, December 14, 1975, in a working context about to be described, some Signalmen performed some rail-bonding work. On the grounds that this is work which is reserved for performance by occupants of the Bonder and Welder classification, the claimants are claiming 4 hours' pay at time and a half for the Sunday.

The work arose on the Harbor Belt Line Railroad. At some stage prior to the Sunday, the Los Angeles County Flood Control District installed a storm drain at a location identified as Figuera and B Streets. The installation required the prior removal of a section of track as well as the flashing-lights signals at the grade crossing. Members of the Track Department replaced the section of track (and had also removed it prior to the installation of the storm drain). Signal Gang No. 3 was called upon to replace the flashing-lights signals. It consisted of a Signal Foreman and

three Signalmen. The assignment was carried out on the Sunday. The work performed by the Gang was not confined to the replacement of the flashing-lights signals. It included the rail-bonding at the replaced section of the track. The record does not reveal how long it took to do the rail-bonding work.

Though the Agreement is of multi-classification coverage, it contains but one Scope Rule:

> "This Agreement covers the rates of pay, hours of service, and working conditions of all employes, classified in Article 1, engaged in the supervision, construction, installation, repair, reconditioning, inspecting, testing and maintenance, either in the shop or in the field, of any and all signal and telephone systems and/or interlocking systems, including all apparatus and devices in connection therewith, and such other work as is generally recognized as signal work."

By both parties' positions in this case, the Scope Rule is to be read as bringing rail-bonding within its coverage. This, however, is of no help in deciding the case. For, on the one hand, both Signalmen and Bonders and Welders are among the employes "classified in Article 1". And, on the other hand, the Scope Rules makes no classification delineations among the functions which form the bundle of work covered by it.

The Signalman classification (Rule 7 under Article 1) reads:

> "An employe assigned to perform mechanic's work on electrical or mechanical signal or telephone apparatus under the jurisdiction of the Signal Engineer."

The Bonder and Welder classification (Rule 8 under Article 1) reads:

> "An employe assigned to perform signal and rail bonding and welding under the jurisdiction of the Signal Engineer."

Rules 22, 23 and 24 are part of Article V, titled "Seniority". They read as follows:

"Rule 22. Seniority Begins: Seniority begins at the time an employe's pay starts in the seniority class in which employed, except that, an employe filling a temporary vacancy in a higher class as a result of an employe being absent due to leave of absence, vacation, illness or other physical disability will not establish seniority in such higher class.

Seniority classes are established as follows:

Class	Classification
1	Assistant Signal Supervisors
2	Signal Inspectors Signal Foremen Leading Signalmen Relay Repairmen Signalmen Interlocking Maintainer
3	Bonding and Welding Foremen Leading Bonders and Welders Bonders and Welders
4	Assistant Signalmen
5	Assistant Bonders and Welders
6	Helpers

Rule 23. Seniority Rights: Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service as herein provided.

Rule 24. Seniority in Other Classes: An employe will have seniority in his own class and all lower classes; except that employes in classes 1 and 2 will not have seniority in classes 3 and 5, and employes in class 4 will not have seniority in class 5."

The Organization makes these arguments: that the Scope Rule, in contrast to what is true of most Scope Rules, covers two separate crafts -- signal employes, on the one hand, and bonder and welder employes, on the other; that rail-bonding work, both by what is expressly stated in Rule 8 and by what is not stated in Rule 7, is obviously the work of the Bonder and Welder craft; that the separateness of the two crafts is not established by the Classification Article alone but, rather, is established by the Seniority Rules as well; that to establish separateness via seniority regulations is to establish separateness in the most fundamental sort of way -- for an employe's seniority rights add up to his most valuable possession; and that the exceptions laid down in Rule 24 -- the exceptions which bar an employe from holding seniority in particular lower classes -- are significant in that they remove any doubt which might be entertained as to the separateness of the two crafts by a reading of Rules 22 and 23 alone. In sum, the Organization is saying that an employe cannot be both a signal employe and a bonder and welder employe and that it must follow that the Agreement was here violated.

We view these arguments as holding clear strength, and, were we presented with a case of first impression, we might well be disposed to uphold them. But the fact is that we are confronted by an area on which there is arbitral history and on which the arbitral history is one-sidedly against the Organization. The real question is whether that history should be applied as dispositive. And, unless one is prepared to provide encouragement for the endless relitigation of the same issues, we believe that the question must be answered in the affirmative.

Reference is to Awards 20543, 20544 (Eischen) and 20784 (Quinn) -- all involving these two parties, all involving the present issue, and all in the hands of the parties when the present claim was filed (Awards 20543 and 20544 having been issued on December 13, 1974, and Award 20784 having been issued on July 13, 1975). We recognize that the last two Awards were mere re-applications of what was found and held in the first Award. But this does not alter the fact that they constitute rejection of the same claim which is here made. We also recognize that the lead-off Decision (Award 20543) dealt with the matter in terms of the exclusivity doctrine -- akin to the approach taken in the usual type of Scope Rule jurisdictional question -- and therewith relied on the nature of an exclusivity claim and the

strength of the showing with which it must be accompanied to prevail. But we cannot reject the approach as clearly fallacious -- for some overlapping under some circumstances may be expected among classifications separated by seniority classes no less than among crafts separated by Scope Rules. And we recognize, finally, that the lead-off Decision in part relied on the fact that "the record indicates that for some 12 years former Pacific Electric Signal Department employes have been doing some bonding work in emergency repairs to signal failures or damages." But the Decision as a whole cannot be read as applicable to emergency repairs only. And the third Award applied it to all three claims presented in that case -- with one of the claims involving a full day's week-end stint by Signalmen, quite as here.

The evidence in our case does not extend to showing precisely how, when and for what duration the Signalmen performed the rail-bonding work. Nor has the Organization urged us to distinguish the present case from the cases covered by the prior Awards -- i.e., the Organization is not saying that it accepts the prior Awards but that it should here prevail because something different is involved. On what we have before us, we think it is legitimately assumed that the rail-bonding work was a small and incidental part of the Signalmen's work on the day in question.

We believe that our proper course is to apply the prior Awards as dispositive of this circumstance. If even such small-and-incidental performance of rail-bonding work by Signalmen is to be proscribed, given the presence of these Awards, we think that it must come about through negotiations between the parties. In the meantime, however, we caution the Carrier against seeking to extend things. Becoming loose in reliance on the prior Awards and the present Award will bring to the fore the Organization's intrinsically strong arguments.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.