

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23279  
Docket Number SG-23355

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it required or permitted Roadway Forces to perform signal work on October 24, 1978, at or near MP A-185.8, Dunn, North Carolina.

(b) Carrier should now be required to compensate Signal Maintainer A. M. Ezzell, Wilson, North Carolina, six (6) hours at his time and one-half rate of pay."

[General Chairman file: 142- A M Ezzell -78. Carrier file: 15-1(79-3) J]

OPINION OF BOARD: There was a derailment on October 23, 1978 which, among other things, caused damage to the signal cable. In the repair process, temporary cables were installed around the derailment. The signal cables were buried in a shallow ditch. The ditch was dug primarily by roadway employees who were in the area waiting to get to the track and perform track work. One signal maintainer assisted the roadway forces in digging the ditch and covering the cable. The other two maintainers were connecting the twists at each end of the derailment.

The claimant, a signal maintainer, alleges that there was not a sufficient emergency with respect to this particular operation to authorize the Carrier to violate the scope provisions of the Agreement which he alleges it did when it used roadway forces to perform work which is within the jurisdiction of the signal maintainer; namely, the digging of the ditch and placing the cables therein. For this violation, the claimant seeks compensation for the six hours which he lost as a result of not being called to duty when he was available to perform this function.

The Carrier justifies its actions basically on two points. One, that the work described is not exclusively the work of the signal maintainer. In this particular instance, communication lines were also being buried, and it is not that well established that this burying of these cables would necessarily be within the scope of the signal maintainer. The second defense is that because of the emergency circumstances it was necessary

to move promptly, and to do this, it used the forces which were on hand. It knew that the claimant was not working at the time, but intended to use him the following morning to continue the work on the derailment and to use him then would exhaust him and not make him available when he would be needed the following morning to continue the signal maintainer's work.

We are aware of the awards which allow the Carrier latitude in the work assignments when there is an emergency which has to be resolved as soon as possible. We are aware, however, that this principle could be abused under some circumstances, and for that reason have reviewed very closely the record and the allegations in the submissions of the parties. There is no question but there is an emergency in the general sense resulting from a derailment. The claimant takes exception, however, to the degree of emergency, if any, as it applies to the burying of the temporary lines stating that the operation of the railroad was not dependent upon the lines being buried. It took the eight roadway men involved twenty-five minutes to perform the function. It is for that reason that a total of six hours is being claimed by the claimant. As a result of the action taken by the Carrier, the wires were out of the way and safe in less than an hour. Since the wires were only to be used temporarily, it would appear that there is no purpose served by burying the wires unless it was to insure that there would be no damage to them while they were being utilized.

We find, after reviewing the facts, that the work performed was an essential part of the emergency repair of the derailment and must be condoned under the circumstances.

Because of our decision with respect to this issue authorizing the actions of the Carrier based upon the emergency circumstances, it is not necessary for us to determine whether the work is exclusively that of the signal maintainer.

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;

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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 30th day of April 1981