

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC - WL):

Claim on behalf of the members of Signal Gang #8, Sacramento, CA; Mr. J. W. Rhines (Foreman); Mr. S. C. Turner (Lead Signalman); Mr. E. A. Dunn (Signalman).

A. That the Southern Pacific Transportation Company violated the current agreement between the Southern Pacific Transportation Company and the Employees of the Signal Department, and in particular The Scope Rule, when on November 8, 1985 Mr. S. E. Wills (District Signal Manager) instructed Maintenance Track Gang #0 to help Signal Maintainer at Elvas to replace the power switch at Brighton, Elvas Interlocking Plant, Sacramento, CA.

B. The track gang had one foreman to supervise two men, one which helped the maintainer unhook the old machine and rods which belong to the Signal Department and the other operated a boom to remove and install the new machine which has been done by signalmen in the past.

Carrier should now be required to pay the three (3) Signalmen eight (8) hours each at their respective pro rata rate of pay."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute but chose not to file a Submission with the Division.

On November 8, 1985, a Signal Maintainer and a Lead Signalman were assigned to work with three employees from the Maintenance of Way Department in a joint project of replacing a power switch at Brighton. The record indicates that the gauge plates had been attached to the ties by signal employees and the new power switch was picked up and moved into place by maintenance of way employees using a speed swing. The maintenance of way employees apparently damaged the new switch while off-loading it and used a torch and/or wrenches to unlock rods and tighten bolts on the switch machine.

The operative facts in the case are set forth in a written memorandum from the Assistant Signal Supervisor who oversaw the job as follows:

"Facts: On November 8, 1985, I instructed Signal Maintainer D. R. Wise and Lead Signalman K. N. Gangler to change the insulated gage plates and ties at 5 switch, Brighton. Mr. Gangler and Mr. Ed Flagler had previously attached the gage plates to the ties.

In order to change the insulated gage plates and power switch machine ties, it is necessary to disconnect and pick up the power switch machine which weighs approximately 700 lbs. and move it about 6 feet out of the way so the ties can be removed. The switch machine was picked up by the speed swing and moved. After the ties and gage plates had been installed, the speed swing replaced the switch machine.

I was informed by Mr. Gangler that the new basket rod they were trying to install would not fit. I asked if the old one could be used and he told me that it had been cut into by the Track Department so it could be removed easily. When replacing the old power switch machine it was damaged and needed to be replaced. I sent Mr. Gangler to the System Signal Shop to pick up a new switch machine and basket rod while Mr. Wise removed the rods and bolts from the old machine. The old switch machine was removed by the speed swing and the new machine was installed. The Track Department employees did assist Mr. Wise and Mr. Gangler in tightening the bolts on the switch machine. The Track Department employees were neither requested to tighten bolts or stopped by Mr. Wise or Mr. Gangler."

The Organization claims a double violation of its Scope Rule when maintenance of way track forces 1) helped unlock the old machine and rods and install the new machine, and 2) operated the speed swing to off load the new machine, remove the old machine, and set the new machine into place. Our review of the record evidence persuades us that there was no violation in the latter activity which is akin to transporting and delivering signal material to the job site rather than performance of an exclusive signal craft skill. See Third Division Awards 13347, 13348, 13691, 18060, 19822, 20463, 23181, 23882. On the other hand, the use of hand tools by maintenance of way track employees to tighten down nuts and bolts on the signal machine and to remove and replace rods in the signal machine is signal reconstruction and installation work plainly reserved for performance by signal forces under the Scope Rule of the Agreement, which provides:

"(a) This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, including electric indicator lights and supporting masts or poles where such indicators are actuated through track circuits and display aspects governing train or engine movements, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, oil buffers, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, detector devices connected with signal systems, including centralized traffic control systems, car retarder systems and hot box detectors and car counting devices when used in connection therewith, dragging equipment detector devices, electric switch lamps, and all other work generally recognized as signal work performed in the field or signal shops."

With respect to the remedy, eight (8) hours pay for each of three signal Claimants is excessive and unrelated to the reality of the violation. However, the Board is not receptive to Carrier's argument that the violation was merely de minimis or that Claimants should be denied any recovery because they were otherwise occupied. This Board has held in numerous cases that a remedy ordinarily is appropriate where a violation of an agreement is proven. See Third Division Awards 12374, 20311; and Second Division Award 9335. In the particular facts of this case we find the appropriate remedy is one minimum call to be apportioned among the three Claimants.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.