

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

PARTIES TO DISPUTE: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O):

On behalf of Lead Signalman Stephen R. Ellison ID #2615481, of the Brotherhood of Railroad Signalmen that;

(a) Carrier did violate the current Signalmen's Agreement particularly Rule 1 (Scope) and Rule 25 (Work outside of assigned hours), when it did permit or require Track Dept. employees to perform Signal work on the T-21 switch on number one main at Hansford, W. Va.

On February 22, 1987 track forces took out and replaced a switch point at Hansford which had been found defective by the Sperry car. They notified the Handley operator that a Signal Dept. employee would be needed. The operator told them that the Handley maintainer was sick, and no attempt was made to notify any other Signal Dept. employees as per Rule 25.

Track forces then performed the Signal work themselves when they disconnected and then reconnected the switch point detector rod and the lock rod connecting rod. This work is and always has been exclusively reserved for Signal Dept. employees.

(b) Carrier now be required to compensate claimant a minimum call of two hours and forty minutes at the time and one half rate of his applicable rate of pay. G. C. file 87-15-CD. Carrier file 15-1 (87-29)."

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 employees 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.

On February 22, 1987, Maintenance of Way Employees removed and replaced a defective switch point and spiked it after it had been replaced. The issue is whether the tasks or work involved in this activity belonged to the Signalmen's craft.

In its initial denial of the Claim on April 21, 1987, the Carrier stated that it attempted to obtain the services of a signal maintainer to work on the defective switch. However, because "those on the scene made a decision that it was unsafe and required changing," the track forces did the work.

On the following morning, February 23, 1987, a maintainer arrived at the work site and adjusted the switch point detector rod and lock rod connecting rod and performed other related work to assure that the device was properly operating. This is work that both parties acknowledged is clearly a part of the Signalmen's craft.

The Organization has expressed concern with respect to safety because the switch was not adjusted or tested until the next day, February 23, 1987, and because there are indications that the Carrier may have violated FRA rules. Those matters are not relevant to the Claim. Many Awards in this industry have upheld the Carrier's right to determine when it will perform or defer its work. We find nothing in the record to show that the Claim may be affected by the Carrier exercising its right, given the particular circumstances leading to this case.

With respect to the merits of the Claim, pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to the Brotherhood of Maintenance of Way Employees as a party of possible interest. The Organization has filed a statement with the Division in which it represents that the instant Claim should be sustained as presented.

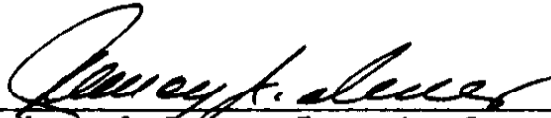
In effect, the Carrier asserts that no signal work was performed by the Maintenance of Way forces on February 22nd and the signal work associated with the changing of the switch point was deferred. As we review the evidence, the switch point that was replaced was work which belonged to the Maintenance of Way Employees. However, the Claim is not for the removal and replacement of the switch point, per se, but for the tasks that were necessary to accomplish that function. The evidence shows that the appurtenances and devices that would have had to be removed to replace the switch point is assigned to the Signal force. However, we also find the work performed on February 22nd was relatively simple and brief (the significant Signalman work being performed the next day) and arose in such circumstances and in light of certain safety factors as to indicate that this case properly falls under the de minimus doctrine. Paragraph (b) of the Claim is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.