

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30423
Docket No. SG-30301
94-3-92-3-107

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Houston Belt & Terminal Railway

STATEMENT OF CLAIM:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the HB&T Railway:

Claim on behalf of M. S. Wolford, for two (2) hours and forty (40) minutes compensation, because the Carrier violated the current Signalmen's Agreement, particularly the Scope, when it permitted a Trainmaster (a non-covered employee) to work on No. 6 switch at Location 233, at 3:00 P.M. on November 14th, 1990."

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.

The Claim arose when the No. 6 switch, controlling traffic out of Settegast Yard, failed to operate properly. It is unchallenged in the on-property record that the switch was located in Claimant's assigned territory. Carrier called a Signal Inspector via radio to make repairs. Upon arriving on the scene, the Inspector observed the Trainmaster attempting to manipulate the internal control relays of the switch to cause it to align properly. Road train HONL was experiencing a delay exiting Settegast Yard.

The Organization contends that manipulating the internal control circuitry of the switch is Scope covered work. It asserted on the property, without refutation, that "Signalmen are the only craftsmen supposed to operate machines by manipulating controller relays." Moreover, it contends that Claimant was available to be called since he had assigned hours of 6:30 A.M. to 3:00 P.M. Carrier did not challenge the hours of his assignment.

The Organization also asserts that no emergency existed to trigger the exception in the Scope clause that permits work performance by others in such event. It notes that the Scope clause says, "Emergencies are conditions such as those arising from floods, wrecks, storms or other conditions which may arise that would threaten the continuous operation of the railway." The Organization says no such event was in progress. Moreover, the Organization described the switch, on the property, as having dual controls, which can be taken off power and operated by changing a throw lever. Carrier did not refute this assertion on the property.

Carrier maintains that an emergency existed. In addition, it says that it did try to contact Claimant without success. It argues that the Trainmaster was only attempting to line the switch, a work function that is shared by many crafts and is not reserved to the Signalmen. It says the Trainmaster performed no Scope covered work in his unsuccessful attempt to line the switch.

Carrier also argues that Claimant suffered no lost work opportunity. It says Claimant is a monthly-rated employee who would have had to respond to the repair call without additional compensation. Accordingly, it says there is no basis to award the amount of overtime compensation claimed.

In reviewing this matter, we have confined ourselves, as we must, to considering only those matters raised and argued in the on-property record. The new material in both Parties' Submissions has not been considered.

Our review reveals that a prima facie case of Scope Rule coverage has been established. Of special significance, in this regard, is the Organization's unrefuted assertion that only Signalmen are to operate switches by manipulating the control relays. It is well settled that unrefuted assertions of material fact can be accepted as evidence. Moreover, the Organization's unchallenged assertion of dual controls, allowing for manual operation of the switch by throw lever, negates the Carrier's emergency contention. Careful review of the on-property record fails to reveal any assertion that the Trainmaster attempted to operate the switch manually but was unable to do so. In addition, Carrier provided no evidence in support of its assertion that it tried to contact Claimant without success. Rather, it is unchallenged that Claimant was on the property at the approximate time the switch failure was discovered. Under the circumstances of this record, we conclude that a violation of the Agreement has been established.

Carrier contended, without opposition on the property, that Claimant would have been due no additional compensation even if he had been called. In addition, there is no evidence that Carrier has engaged in repeated or otherwise flagrant violations of a similar nature. Under such circumstances and in the absence of any proof of actual loss to Claimant, awarding the claimed compensation would amount to a penalty. No Agreement language permitting the imposition of such a penalty has been cited by the Organization. On balance, we find the appropriate remedy is to credit Claimant with an additional two hours and forty minutes of time worked during the month of November 1990, as though he had been called out for the disputed repair work. It is left to the parties to determine whether, under their effective Agreement, the addition of this service time credit, when combined with his other time worked during the month, triggers any additional compensation for Claimant.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.