

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35074
Docket No. SG-34309
00-3-97-3-916**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Long Island Rail Road Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen the Long Island Railroad:

Claim on behalf of S. Alenski and J.F. Randall for payment of nine hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to perform work on signal system equipment at L.I. Wholesalers siding on July 24, 1996. Carrier’s File No. SG-22-96. BRS File Case No. 10459-LI.”

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 were given due notice of hearing thereon.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

The Organization contends that the Carrier violated the Scope Rule of the Controlling Agreement by allowing Track Department employees to remove an Automatic Speed Control loop and heaters from L. I. Wholesale's siding on July 24, 1996. The Carrier maintains that the Track Department was removing a switch and straight railing that section of track. It contends that the heaters previously disconnected by signal forces were removed as part of the stock rail. It further contends that the ASC loop was not removed, but in fact was broken by track forces and had to be repaired by the second Trick Signal Inspectors from Valley Stream. The Carrier also contends that the only possible violation consisted of the removal of staples from up to a maximum of 15 ties and that this removal was a de minimis function.

The burden of proof in this case rests upon the Organization. In a letter dated March 5, 1997 sent to William R. Saar, Jr., General Chairman of the Organization, by Donna Simonie, Director of Labor Relations for the Carrier, she states:

" Mr. Saar agreed with Mr. Farrell's account of the events. He conceded that it was within management's discretion to discard the switch heaters in this manner and the signal forces were not required to remove switch heaters that were being discarded with rail.

Mr. Saar argued that track workers moved the ASC loop and subsequently broke the loop. Mr. Farrell stated that track workers were required to work around the ASC loop and had occasion to disturb the loop in order to repair some ties. Mr. Farrell further explained that tie replacement was not a part of the originally planned straight rail assignment. These ties had to be replaced because they were in poor condition. In the attempt to work around the ASC loop the track workers damaged it. Once this damage was detected, signal forces were called in to repair the damaged loop."

The Organization has introduced no evidence that disputes the Carrier's characterization of the incident which occurred, or the Carrier's contention that Mr. Saar made the concessions as alleged. The Organization does claim that even a de minimis intrusion into its work jurisdiction constitutes cause for relief. The removal of the staples as described, does not even rise to the level of de minimis and can best be described as being incidental to work performed by the track workers. The Organization has failed to meet its burden and the claim is denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of November, 2000.