

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37545
Docket No. SG-36658
05-3-01-3-193

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of J. E. Abernathy for payment of thirteen hours at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule when on several dates during the month of February of 2000 Carrier utilized field welders to remove bond wires from various live track circuits on the Claimant's assigned territory. Carrier's action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1224998. General Chairman's File No. Nscope-044.BRS File Case No 11556-UP.”

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.

Claimant J. E. Abernathy, a Signal Maintainer working at Carroll, Iowa, when this dispute arose, maintains that the Carrier violated the Scope Rule by allowing track maintenance personnel to remove 26 bonds at 24 different locations during February 2000. He seeks 13 hours of straight time pay for the loss of work opportunity he claims to have sustained by uncovered employees performing Signalmen's work.

The salient facts are undisputed. On numerous dates commencing February 8, 2000 and running through the end of that month, the Carrier assigned Welders Lenzen, Nelson, Snedden and Hiatt to remove bond wires from track on the Carroll Territory, Council Bluffs Service Unit before making field welds, rather than assigning personnel from the Signal Department. The Organization contends that the work at issue was accomplished in connection with "changing or repairing old rail" as those terms are used in the governing Scope Rule, noting that the Welders themselves requested that Signalmen remove the bonds. It states that the Carrier refused their request based upon a lack of manpower and work overload among Signal personnel.

The Carrier takes the position that no Scope Rule violation is presented because the Welders were not engaged in "changing or repairing old rail." It states that when the rail was initially found to be defective, Signal Department employees changed out the rail, but on every one of the February dates in question one end of the rails involved was simply welded to another, forming continuous rail. In short, the only thing the field Welders accomplished was to secure track protection, remove the bond wires - taking about five minutes per rail - and make a weld, there being no further need for the bond. Lastly, the Carrier denies that there was any shortage of Signalmen at the time or that the Signal Department was operating under any unusually heavy workload.

The language of Scope Rule upon which both sides defend their respective redoubts provides as follows:

"SCOPE

This agreement covers the rates of pay, hours of service and working conditions of employees in the Signal Department who construct, install, test, inspect, maintain or repair the following:

* * *

2 (a) Bonding of track for signaling purposes.

'Note 3: In changing or repairing rail, when bonds or track wires are removed while in the track, the work will be performed by Signal Department employees. It is understood that the removal of bonds or track wires after the rail is removed from the track may be performed by other than Signal Department employees.'"

Based upon a review of the facts presented, the Board concludes that the stress fracture in the Organization's argument lies with the contention that the bond wires were removed in conjunction with changing or repairing old rail. If there is any ambiguity in the above language with respect to how the parties intended it to be applied to the facts is this dispute, the Carrier's unrebutted account of the Rule's origin and past application, described below, easily overcomes the Organization's premise that the welding at issue was done in conjunction with a "repair."

As noted in the Carrier's unchallenged statements denying the Organization's appeal of May 24, 2000, the language of Note 3 derives from the former Union Pacific CBA and became effective as to the former Chicago & North Western Signalmen only as of February 1, 2000. In describing its past application, the Carrier notes that while the Local Chairman might be new to his position and unaware of past practice, several statements from both the Signal and Track Maintenance Departments make it clear that UP field Welders system-wide have always accomplished the work in question under the same language as found in Rule 54 of the UP BRS Agreement effective October 1, 1986. Especially persuasive on the point is the statement of 28-year signal employee Hanquist, a former BRS Local Chairman. Hanquist represents that he has "covered the UP from the Omaha-Kansas City area clear to the West Coast and . . . never heard of this as a

union complaint or issue. According to Hanquist, the Signal Department "has never removed any bonds prior to being field welded." He explains the purpose underlying the rule in the following terms:

"The old Rule 54 (removal of bond wires) in the old UPRR BRS agreement was to cover rural cropping gangs or rural replacement where a bond was removed and subsequently replaced to ensure continuity of the signal circuits. With the advent of welding in the field the bond becomes unnecessary and is no longer a part of the signal circuit. We even required signal people to use weld bonds on any joint to be field welded so it could be ground off prior to welding so no foreign material would cause the weld to fail."

Hanquist explains that the work challenged was not "rail cropping," where Maintenance of Way employees take off the battered ends of rail then slide the ends together. In such cases the drilling of new holes and bonding is accomplished by Signal employees.

In support of his representations with respect to never using Signal employees to remove bonds for track welding, Hanquist offered a poll taken of his fellow managers including a statement by Manager Track Maintenance Biggerstaff, who indicated as follows:

"This is a common practice for a welder to remove the bond wire and make a field weld. When he is done there is no need for the bond. . . ."

Consistent with the foregoing, Third Division Awards 20536 and 20712 have concluded that the removal of bond wires where continuous rail was being welded did not constitute "repair."

In sum, the record convincingly demonstrates that field welding gangs in the circumstances presented in February 2000 were not engaged in either the repair or replacement of rails as the parties have understood those terms. Accordingly, because Note 3 does not limit the work of removing bonds solely to skilled Signalmen under the circumstances presented, the claim must be denied.

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 20th day of July 2005.