AAR EXCEPTS TO 3 RULE CHANGES

The following material is an abstract of the exceptions of the Association of American Railroads to the examiner's recommended report and order *(RS&C Sept. 1964, page 28)*, concerning signal rule changes under Ex Parte 171. Material in bold face in a rule represents proposed new words and phrases.

136.11 Adjustment, repair, or replacement of Component.—When any **component of a system or interlocking, except track rails, the proper functioning of which is essential to the safety of train operation,** fails to perform its intended function, it shall be adjusted, repaired or replaced **without undue delay.**

As further proposed in Examiner's report:

136.11 Adjustment, repair, or replacement of Component.—When any component of a system or interlocking, the proper functioning of which is essential to the safety of train operation, fails to perform its intended function, it shall be adjusted, repaired or replaced without undue delay.

The AAR excepts to the Examiner's failure to include in his recommendation for a new Rule 11 the words "except track rails," forming an essential part of the Bureau's proposal, which the Examiner adopts in all other respects. The effect of the Examiner's refusal to adopt this element of the proposal can be shown by quoting the rule recommended by the Examiner, the words he omitted being underlined:

> "When any component of a system or interlocking, *except track rails,* the proper functioning of which is essential to the safety of train operation, fails to perform its intended function, it shall be adjusted, repaired or replaced without undue delay."

By excluding the underlined words from his recommendation the Examiner would embrace within the signal rules the far broader and unrelated subject of track maintenance and make it also subject to Federal law. The AAR respectfully submits that this inclusion of rail is not supported by the evidence and carries with it grave implications that go far beyond the ambit of the Signal Inspection Act.

Rail could perhaps be called a "component of a [signal] system" within the meaning of those words as they appear in proposed Rule 11. It does not follow, however, that rail must or should be treated as are other components of the system under the Signal Inspection Act, for the fact is that the primary function of rail is to provide a surface for the movement of trains. Its signal function is merely incidental. This was recognized by the Bureau more than fourteen years ago when it excluded track rail from the operation of Rule 11. The pending Bureau proposal merely puts this practice into express language. The correctness of the Bureau's position in this respect and the corresponding error of the Examiner's recommendation can be demonstrated by careful analysis of the rail's "intended function" in signalling. Before such analysis is undertaken, however, one point should be made clear. The issue here is not whether broken rail is potentially dangerous for the purpose of carrying trains (it may or may not be, depending on the circumstances), but rather whether a rule requiring the repair of rail under threat of fine has any place in a code of *signal* rules. The railroads repair rails today as they have always done under their maintenance of way rules and practices, and they do it just as promptly as possible when a given rail defect might create hazards. The AAR's objection to the Examiner's recommendation in this respect, therefore, is not an objection to repairing rails as such, but rather to what amounts to an assumption of jurisdiction over a subject which is outside the Commission's jurisdiction.

Track rails have two distinct, different, and separate functions: the carrying of trains and the carrying of signal circuits. The first is the essential function; the second a useful by-product. A railroad can exist without signals but not without rails. All rails carry trains; but less than half the rails in the United States carry signal circuits.

The primary purpose of the signal circuit is to show, through a signal included in the circuit and located at the entrance to the block through which the circuit passes, whether the block is occupied by a train. Occupancy of the block will cause this circuit to be shunted or short circuited by being passed through the wheels and axles of the occupying locomotive or train, which will impel the signal to display its most restrictive aspect, thereby warning approaching trains to stay out of the block or enter it with caution. Incidental to this primary function of the signal circuit is its ability, under certain circumstances, to give the same warning of the existence of a broken rail. If the rail is broken in a particular place and manner, the signal circuit will also be broken, and the signal governed by the circuit will display its most restrictive aspect. This is an intended result of the rail break and one that, within the limits of possibility, is *required* by the Commission's Rule 205. All parties to this proceeding are agreed, however, that certain rail breaks are *not* capable of being reflected in the signal system. This is true both when the break is incomplete and therefore does not sever the electric contact between the undamaged portions of the rail and also

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when the break, though complete, occurs within the area of a rail protective device, such as a tie plate, joint bar, or frog, which provides a bypass for the current. Also, a break in the rail of a shunt-fouling circuit or crossover will not cause the signal to display its most restrictive aspect.

For signal purposes, therefore, the "intended function" of the rail is threefold: 1) to carry the signal circuit, 2) to provide a break in that circuit when a train, locomotive, or car is on the rail, and 3) to provide a break in that circuit when circumstances permit a rail break to do so. It follows, then, that

A) when the signal circuit passes through a broken rail for one of the reasons mentioned above, the rail is performing its *signal* function of carrying the circuit; and

B) when the signal circuit does not pass through a broken rail, and the related signal consequently displays its most restrictive aspect, the rail is also performing its *signal* function of opening the circuit.

The Examiner's refusal to exclude track rails from the operation of Rule 11 therefore creates the anomaly that instances where track rails perform their intended functions for *signal* purposes must be treated as "signal defects" for which railroads may be fined in Federal courts. This anomaly arises from the Examiner's misplaced emphasis on the incidental signal function of rails as distinguished from their primary function of carrying trains. He has thus recommended a rule that will require railroads under penalty of the law to repair rails *as devices for carrying trains* under color of a statute and rule designed to reach *signal* defects. But there can be no *signal* defect in the circumstances discussed above arising from broken rail. If the track rail exception is not inserted in Rule 11, therefore, the Commission will be extending its regulatory power into an area where it has no jurisdiction. It will be attempting to regulate track repairs by requiring the "repair" of signal systems that are working precisely as intended.

In support of his position, the Examiner referred to the fact that track rails were expressly included among signal devices in the predecessor of Rule 11 in the 1939 Signal Code, but were not mentioned in the 1950 revision of that Code and, in fact, were not considered by the Commission's staff as within the scope of Rule 11 from 1950 to date. The Examiner then said that "the record is . . . fatally silent" on the reason why rails were once included under, then excluded from, the coverage of the rule.

Why "fatally"? The explanation for the exclusion of rail from Rule 11 since 1950 appears above: when a rail breaks, whatever effect there may be on the signal system, there is no "defect" in that system. And, in any case, why should the absence of an explanation for this 14-year-old change in the rules have any bearing on what should be done now?

If the "record" the Examiner thus refers to is that of the 1950 case, and the "silence" that of the Commission's 1950 report, this is surely nothing the present parties can be held responsible for. If the reference is to the instant record, the Examiner is seeking to impose a burden where none exists: Neither the AAR nor the Bureau has any obligation to explain the Commission's past actions; nor, of course, has the Commission itself.

The Bureau's proposal for excluding track rails from Rule 11 is merely a restatement and reaffirmation of the existing rule. No change in this element of the rule has been proposed. The Examiner's refusal to accept this language, which merely puts the existing rule into precise verbal form, therefore actually changes the existing rule.

But no change in the rules can be adopted unless there is substantial evidence to support it. The party that would change the existing rule—the RLEA in this instance—has the burden of supplying such evidence or at least of going forward with its proof. But there is no such proof in this case. The Examiner's reasoning in this respect is all the more incomprehensible because he took a diametrically opposite position with respect to a proposed change in Rule 51. In this connection he said:

> ". . . the record is lacking in evidence respecting the inclusion of such a rule in 1939 and the exclusion of it in 1950. Since it was most pointedly taken out in 1950, something more than we have here would be necessary before it should be reinserted".

That is exactly the case with exclusion of track rails.

The Examiner further attempted to support his determination to include track rails within the scope of Rule 11 by saying: "It is almost illogical on its face to repeatedly stress the safe movement of trains, signal-wise, on the one hand, while affirmatively excluding track rails, a conductor of the signal circuit and also the most fundamental of all things for the movement of trains, on the other." This formulation may have a surface appeal to logic; but below the surface, reason enforces a different conclusion. Exactly the same "logic" would support a rule requiring the prompt replacement and repair of rail outside the signal system, which, as the record shows, is the majority of rail in use in the United States. But it must be obvious that adoption of any such rule would be far beyond the Commission's powers. Broken rail may sometimes be dangerous, as the Examiner points out; but the Commission in writing *signal* rules is not authorized to adopt rules simply because it may think they will mitigate dangers in some other area of railroading.

136.51 Track circuit requirements.—Track relay shall be in deenergized position whenever any of the following conditions exists, and the track circuit of an automatic train-stop, train-control, or cab-signal system shall be deenergized in the rear of the point where any of the following conditions exists:

(a) When a rail is broken or a rail or switch-frog is removed except when a rail is broken or removed in the shunt fouling circuit of a turnout or crossover, provided, however, the shunt fouling circuit may not be used in a turnout through which permissible speed is greater than 45 miles per hour. It shall not be a violation of this requirement if a track circuit is energized:

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(1) When a break occurs **between the end of rail and track circuit connectors; within the limits** of rail-joint bond, **appliance or other protective device, which provides a bypath of the electric current,** or (2) As result of leakage current or foreign current in the rear of a point where a break occurs or a rail is removed.

(b) When a train, locomotive, or car occupies any part of the track circuit, including fouling section of turnout except turnouts of hand-operated main track cross-over. It shall not be a violation of this requirement where the presence of sand, rust, dirt, grease, or other foreign matter prevents effective shunting, **except that where such conditions are known to exist adequate measures for insuring safety of train operation must be taken.**

(c) Where switch shunting circuit is used:

1. Switch point is not closed in normal position.
2. A switch is not locked where facing-point lock with circuit controller is used.
3. An independently operated fouling-point derail equipped with switch circuit controller is not in derailing position.

The AAR excepts to the adoption by the Examiner of the proposal for a change in subparagraph (b) of Rule 51. There is no need to detail here the AAR's reasons for excepting to this portion of the Examiner's recommendations, since this new matter was made the subject of a motion to strike from the Bureau's brief filed by the AAR. At this point in his report the Examiner denies this motion but indicates that the AAR need only except to his action and request a hearing on the issues as yet not heard.

Accordingly the AAR hereby not only excepts to this action of the Examiner but requests an oral hearing on all the issues involved in the Bureau's untried proposal. At such hearing it is manifest that the Bureau will have the burden of going forward and the burden of proof with respect to its suggestion.

In returning to the same subject, the Examiner indicates that a hearing on these issues may be sought by a petition. If such petition, in addition to the foregoing exception, is required for this purpose, the AAR respectfully requests that this portion of the present document be treated by the Commission as a petition for a hearing on the issues raised by the Bureau, of which it had no notice, as to which it had no opportunity to bring forward evidence or argument, and which it contests.

The AAR respectfully urges that further proceedings directed toward the remainder of the Examiner's report should take place just as though no additional hearing were required, so that the Commission may act finally on the Examiner's recommendations and any exceptions thereto that may be filed even though the wording of subparagraph (b) of Rule 51 may yet be undetermined by reason of the hearing aforesaid. In short, the AAR believes that the matter of modification of Rule 51(b) should be severed from the remainder of the case for procedural purposes so that final disposition of the rest of the Examiner's recommendations may be undertaken in an orderly fashion without delay.

136.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism.—The control circuit for **each aspect with indication more favorable than "proceed at restricted speed"** of power-operated signal governing movements over switches, movable-point frogs and derails shall be selected through circuit controller operated directly by switch points or by switch locking mechanism, or through relay controlled by such circuit controller, for each switch, movable-point frog, and derail in the routes governed by such signal. Circuits shall be arranged so that such signal can display an aspect **more favorable than "proceed at restricted speed,"** only when each switch, movable-point frog and derail in the route is in proper position.

NOTE:—Relief from the requirements of this section will be granted upon an adequate showing by an individual carrier. Relief heretofore granted to any carrier by order of the Commission shall constitute relief to the same extent from the requirements of this part.

Note. Existing installations on each railroad, which do not conform to the requirements of the section shall be brought into conformity therewith on or before December 31, 1969.

The AAR excepts to the Examiner's failure to adopt the footnote proposed in the AAR's brief. That footnote reads as follows:

> "Note: Existing installations that do not meet the trailing-point switch, movable-point frog, or derail requirements shall be brought into conformity with such requirements when major modification of the interlocking is made."

The Examiner's recommendation reads as follows:

> "Note. Existing installations on each railroad, which do not conform to the requirements of the section shall be brought into conformity therewith on or before December 31, 1969."

This recommendation would require existing installations that do not meet the trailing point requirements of Rule 303 to be brought into conformity therewith inside five years. In support of this recommendation the Examiner asserted that the Bureau "suggests a 5 year compliance period"—and no more. The fact is that the Bureau, through its only witness [G. B. Anderson], suggested both the five-year compliance period and compliance at the time when major modification of an interlocking is undertaken as alternatives of equal suitability. The witness made no distinction between the two in his testimony. The AAR very clearly, through its witness F. Youngwerth, adopted the "modification" alternative: and, as indicated above, that alternative (already on the record) was put into formal language in the quoted note of the AAR's brief to the Examiner. Nothing in the record suggests that this note would impair safety. On the contrary, the record is absolutely clear that there is no safety justification for any change in trailing point protection in the older interlockings and there is therefore no justification for the requirement of compliance within the five-year period the Examiner has adopted.

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ICC Bureau of Safety Comments:

With respect to [AAR exception on Rule 303], the recommended requirement that existing installations be brought into conformity with Rule 303 on or before December 31, 1969, places no undue burden on the carriers and is a reasonable and necessary requirement in the interests of railroad safety.

The footnote recommended by the Association of American Railroads is unsatisfactory in part because the term "major modification" is indefinite. Changes which might be considered minor when made to a large installation may and could be considered major modifications of a small installation. Thus said Association's recommended footnote would not only be an indefinite standard for industry to meet, but also would create unnecessary administrative and enforcement problems for the Bureau.

Also experience has demonstrated that an indefinite time limit for compliance has not been any stimulus to meet the law's requirements. Hence, unless a definite time is set within which existing installations are brought into conformity, the proposed requirements of Rule 303 will have no more effect upon nonconforming existing trailing point switches than does the present rule.

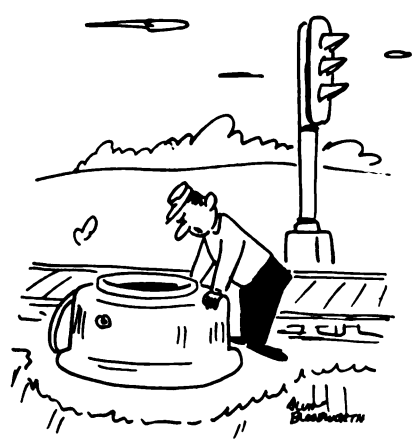
The AAR exceptions states "the record is absolutely clear that there is no safety justification for any change in trailing point protection in older interlockings . . . and therefore no justification for the requirement of compliance within the five year period the Examiner has adopted." Apparently all railroads do not agree with that statement because some have provided trailing point protection for many years. Then too, if trailing point protection is needed to insure safety of train operation at new installations, similar protection at old installations also would seem to promote safety. In 1950 the railroads as here then contended a trailing point protection requirement would impose unnecessary expense on the carriers and anyway the older interlockings would be replaced or rehabilitated gradually at which time trailing point protection would be provided. Fourteen years have since passed and yet there is no assurance that these installations will be provided with that protection in the foreseeable future. Hence to apply some impetus to providing trailing point protection at all interlocking, a time limit for compliance should be set. The Examiner's recommendation thereon should be adopted.

136.201 Track-circuit control of signals.—The control circuits for home signal aspects with indications more favorable than "proceed at restricted speed" shall be controlled automatically by track circuits extending through the entire block.

ICC Bureau of Safety Comments to RLEA Exception:

The RLEA cites rule 136.201 as one of the rules which the Bureau of Safety and Service revised informally. From its adoption, this rule has been construed to be applicable to home signals only. Such construction did not modify or change the requirements, but merely is a common sense application of the meaning of the rule. The only purpose of the proposed revision of rule 136.201 was to clarify the original intent and purpose of the rule. Notwithstanding RLEA's objection to the use of the term "home signal," the fact remains that nothing has been changed by making the proposed rule applicable only to "home signals." Also, by spelling out in the proposed rule that only aspects more favorable than proceed at restricted speed shall be controlled automatically by track circuits, the requirements of the original rule were not changed one iota. This is so because proceed at restricted speed and stop aspects cannot be controlled by track relays. It thus follows there could not possibly be any requirement in the present rule for such track circuit control of those aspects. **RS&C**

'Have a chuckle on us'



"You're not in there checking batteries, you're asleep!"

"Yeah I got it. Two bucks on Beatnik to win in the fifth."

"I dunno what it is. Maybe a traffic light for midgets."