

Award No. 16335
Docket No. SG-16477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) On March 23 and 26, 1965, Carrier violated the current Signalmen's Agreement, as amended, when Wingard Electric Company, Lexington, South Carolina, using four (4) men for eight (8) hours each day, was employed to set poles and raise the Signal Transmission Lines at or near Mile Post R-101.

(b) Signal Maintainer P. G. Lotshaw be paid at the straight time rate for thirty-two (32) hours on each of these dates, a total of sixty-four (64) hours. [Carrier's File: SG-21513]

EMPLOYEES' STATEMENT OF FACTS: This dispute, like so many others from this property, of which some have been decided by the Division and others are awaiting adjudication, involves the performance of Signal Work by persons not covered by the Signalmen's Agreement.

In connection with the installation of a new turnout at or near Mile Post R-101, it was necessary to raise the Signal Transmission Lines. Carrier contracted out the work in connection therewith to Wingard Electric Company, Lexington, South Carolina.

Using four (4) men for eight (8) hours each on both March 23 and 26, 1965, the contractor dug four pole holes, set four poles (one 45-foot pole, two 40-foot poles, and one 35-foot pole), and installed three anchors. A total of 64 man-hours was devoted to the project.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim by Vice General Chairman G. F. Harper, on behalf of Crossing Signal Maintainer P. G. Lotshaw, was presented to Signal & Electrical Superintendent L. C. Brown in a letter dated May 3, 1965, which has been reproduced and identified as Brotherhood's Exhibit No. 1. Subsequent correspondence relating to the handling of the case on the property has been reproduced and also attached hereto; it is identified as Brotherhood's Exhibits Nos. 2 through 7.

"Reference is made to your letter of July 10 concerning claim on behalf of P. G. Lotshaw, signal maintainer, for pay for 64 hours at straight time rate because poles were set by employes of Wingard Electric Company at or near milepost R-101 on March 23 and 26, 1965.

The agreement was not violated, and the monetary claim which you have attempted to assert on behalf of P. G. Lotshaw is without basis. As already explained, Mr. Lotshaw was on duty and under pay when the claimed work was performed. Obviously, he could not have been in two places at the same time performing two different types of work. Furthermore, he could not have performed the claimed work had he been available.

As the agreement was not violated, and the monetary claim is without basis and unsupported by the agreement, payment is declined."

On October 12, 1965, the claim and demand presented by the Brotherhood's Vice General Chairman was discussed in conference between Carrier's Director of Labor Relations and the Brotherhood's Vice General Chairman, following which on October 13, 1965, Carrier's Director of Labor Relations addressed the following letter to the Brotherhood's Vice General Chairman:

"This refers to our discussion in conference on October 12 of claim on behalf of P. G. Lotshaw, signal maintainer, for pay for 64 hours at straight time rate because poles were set by employes of Wingard Electric Company at or near milepost R-101 on March 23 and 26, 1965.

As explained in our conference, the agreement was not violated. The electrical transmission line had to be raised at the referred to location in order to have proper clearance for a new turnout being installed. No railway force was available to do the work. Therefore, in accordance with custom, arrangements were made with Wingard Electric Company to dig four pole holes and set four poles in the holes dug by a machine, one 45-foot pole, two 40-foot poles, and one 35-foot pole. Three anchors were also installed. Furthermore, as already explained, the claimants were on duty and under pay when the involved work was performed, and were not, therefore, adversely affected in any manner whatsoever. Then, too, I understand they are 'protected employes' under the agreement of April 16, 1965. (April 3, 1965)

As I explained in conference, Section 6 Notices have heretofore been served by your organization requesting exclusive rights to perform work of the type involved, but such right has never been conferred upon signal forces.

Claim being unsupported by the agreement and without basis, this will confirm my previous declination of the same."

OPINION OF BOARD: This precise issue between the same parties has been before the Board on two previous occasions, decided in Awards

11733 and 15888. In both cases, the Board held for Claimants who, as in the case before us, were contesting Carrier's use of a contractor to set poles.

The matter having been decided twice before, we hold that stare decisis requires an affirmative award.

As to the remedy, Carrier acknowledged that 12 hours of work were performed by the contractor's men. This statement having been uncontroverted, the claim is sustained to that extent.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claimant shall be paid for 12 hours at straight time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.