

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Eastern Lines**

STATEMENT OF CLAIM: *Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railroad that:*

(a) The Carrier violated the Signalmen's Agreement effective February 1, 1946, when on October 24, 1951, it contracted, farmed out, assigned, or otherwise allotted a portion of the work covered by the then current agreement, which was heretofore assigned to and performed by the Signal Department employees, to persons not covered by the Signalmen's Agreement.

(b) Claim that all the Signal Department employees of the Eastern and Kansas City Division seniority district who were assigned to the positions and signal work at the Argentine Hump Yard during the period of time from October 24, 1951, to December 10, 1951, at which time signal work was performed by employees of the Delong Contracting Company, be paid at their respective overtime rates of pay for a number of hours equivalent to the number of hours worked by the employees of the Delong Contracting Company while those employees performed the work of cleaning the car retarders, switch boxes, switch machines, relay and instrument houses, signal equipment, including all their appurtenances and appliances, at the Argentine Hump Yard; each Signal Department employee assigned to positions at the Argentine Hump Yard during the period signal work was improperly assigned to the employees of the Delong Contracting Company be compensated for his proportionate share of the total time worked by the Delong Contracting Company's employees.

EMPLOYEES' STATEMENT OF FACTS: The Carrier contracted to the Delong Contracting Company of Omaha, Nebraska, the signal work involved in the cleaning of signal equipment, including car retarders, switch boxes, switch machines, relay and instrument housings, including all their appurtenances and appliances, at the Argentine Hump Yard located at Argentine, Kansas.

Without prejudice to or receding from its position that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules and should be denied, the Carrier further asserts that Item (b) of the Employees' claim contemplating payment at "overtime rates of pay" is contrary to the well established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

All that is herein contained has been both known and available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 12, 1951, Carrier's Argentine Kansas Yards, including the Hump Retarder Yard, were inundated by a heavy flood. The Hump Retarder Yard was out of service from July 13 through August 6, 1951. As soon as the flood had receded Carrier assigned its forces to the necessary cleaning up operation. The two Signal Department employees who were regularly assigned to this location engaged in the cleaning and repairing of the retarders and signal equipment. They were assisted therein by a special force of signal extra gang employees sent from other locations on the property. Large amounts of overtime were worked by these Signal Department employees in connection with restoring the Hump Retarder Yard to operative condition. Carrier states that "in addition, a labor force was recruited, supplemented by every conceivable type of machine, truck or mechanical contrivance which could be transferred, borrowed, bought or used to dig out and remove the stench-ridden residue of the flood." (R., pp. 14-15)

After the operation of the Yard was resumed on August 7 the Signalmen continued their cleaning operations until December 10, 1951. They renovated retarder air cylinders, and cleaned switch assemblies and the instrument and relay cases. It appears that after the Yard had been restored to working order there nevertheless remained certain residue which could not be removed by the cleaning methods utilized by Carrier's forces, which included a fire hose and water, brushes and other manual means.

Immediately after the flood crest had receded the Carrier obtained the services of the L. C. DeLong Company of Nebraska City, Nebraska to clean the buildings and facilities in the flooded area. DeLong used three oil-fired high pressure steam cleaners, operated by its own personnel, in this task. A strong commercial solvent was utilized with the cleaners. Carrier states the contractor was assigned first to clean those buildings and facilities which needed cleaning the most, with the result that it was not possible to bring the steam cleaners to the Hump Retarder Yard until October 22. From that date until about December 7, 1951 DeLong steam cleaned in and around the Retarder Yard, including the retarders, switch layouts, instrument cases, etc. On December 19, 1951 Organization's Local Chairman filed a claim that in permitting the contractor to clean signal equipment, car retarders, and their appurtenances and appliances, Carrier improperly removed work from the Signalmen's Agreement.

Carrier concedes its signal employees at the subject location "have rights to the normal cleaning procedures involving signal equipment, car retarders and their appurtenances and appliances." (R., p. 63) It contends, however, that the steam cleaning in question has not previously been recognized and is not now recognized as signal work. Organization asserts that cleaning of the equipment in question has been done by signal employees ever since this Yard was opened in 1949, that they had not done steam cleaning before since the

Yard had not previously experienced a flood, but that the Carrier could easily have used its own steam lines to perform the cleaning task in question.

We do not find merit in this claim. The services supplied by DeLong involved the use of special equipment not possessed by the Carrier. We cannot hold that Management was obligated to purchase such equipment solely for use in such an unforeseen emergency. Nor are we entitled to presume, on the basis of this record, that Carrier could have readily obtained equipment of this type on other than a purchase basis. Finally, the record does not enable us to conclude that the equipment already possessed by the Carrier could have satisfactorily performed the necessary cleaning work done by the outside contractor.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July, 1958.