

Award No. 13745
Docket No. SG-13760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis —

Claim is filed on a continuing basis, retroactive 60 days from the date claim was initially filed (October 16, 1961), or date actual work commenced on the installation, construction, testing, and inspecting of the signal systems, appurtenances, and appliances in the river front tunnel at St. Louis, Missouri, until such time as the installation, construction, repair, dismantling, maintenance, testing, and inspecting of such facilities, appurtenances, and appliances is properly returned to and performed by Signal Department Employees covered by the Signalmen's Agreement, as follows:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when it contracted, farmed out, assigned, or otherwise permitted Scope work at the river front tunnel in St. Louis, Missouri, to be performed by parties and persons not covered by the Signalmen's Agreement and who hold no seniority and rights to any of the Scope work covered by the Signalmen's Agreement.

(b) Signal Maintainer J. F. Moynihan (I. D. Tower), and the employees of Construction Gang No. 4, namely, Signal Construction Foreman E. E. Owens; Leading Signalman J. F. Dosing; Signalmen C. K. Highley, W. F. Mueller, E. Bubla, F. Leming, B. Mathias, and K. K. Kapelski; and Signal Testman E. Saterfield, be paid at their respective overtime rates of pay for a proportionate share of the time consumed by the parties and persons in the installation, maintenance, construction, testing, and inspecting, and other Scope work as referred to in part (a) of this claim, until such time as all the Scope and other work covered by the agreement is properly assigned to Signal Department Employees of this Carrier.

(c) Since the Signal Department Employees and our Brotherhood do not have access to records showing the amount of time consumed by the parties and persons not covered by the agreement who per-

formed the diverted signal work in question, we are not in position at this time to furnish an exact amount of time involved; therefore, it is understood that exact amounts will have to be considered and determined in negotiations on the property after such records are examined.

(d) This claim to cover any and all Signal Department Employees who may have been adversely affected account of the Carrier's violation of the agreement, in an amount to be determined after such is known. [Carrier's File: 013-311-15]

EMPLOYEES' STATEMENT OF FACTS: The bridge (or elevated track structure) along the river front at St. Louis, which had been used by trains leaving and entering Union Station for many years, when they cross the river north of the city, was removed during the construction of a memorial park. The thought was that the bridge would mar the view of the river, so a series of tunnels and connecting open cuts were constructed to replace it. New tracks and signals were installed in the tunnel, and the bridge was removed. The signals and allied appurtenances on the bridge were installed, maintained, repaired, tested and inspected by signal employees classified in and covered by the Signalmen's Agreement.

The construction of this memorial park has received a considerable amount of publicity. For example, the following, and several pages of accompanying photographs taken during the construction, appeared in the PICTURES section of the February 5, 1961, ST. LOUIS POST-DISPATCH:

"The elevated railroad tracks that have been a St. Louis riverfront landmark for more than 60 years will soon be nothing but a memory. The interesting but unsightly trestle is being scrapped to provide an unobstructed view of the Mississippi River for visitors to the planned \$30,000.00 Jefferson National Expansion Memorial. This memorial will have a new and modern Riverfront signature in the form of a 590-foot stainless steel arch.

A series of three tunnels and connecting open cuts, under construction since July 1, 1959, will replace the elevated tracks in carrying trains along the riverfront. This project, providing dual tracks for a stretch of some 3700 feet between Washington Avenue and Poplar Street, is expected to be completed by late summer. On the new tracks, trains will traverse the riverfront practically unnoticed. Once the new track is accommodating the 14 passenger and freight trains now daily using the trestle, the old structure will be torn down, probably before the end of this year.

Relocation of the track will cost an estimated \$2,940,000; the Federal Government is defraying \$1,875,000 of this from the \$2,640,000 Congress appropriated for the start on the memorial. The city will pay \$625,000 from bond funds and the Terminal Railroad Association, owner of the elevated tracks, is contributing \$500,000.

The 82-acre memorial is to be a wooded park whose central feature will be the glistening arch designed by architect Eero Saarinen to symbolize St. Louis as the Gateway to the West. Plans also call for museums and other exhibits dealing with frontier life. The memorial is expected to be completed in time for the celebration, in 1964, of the 200th anniversary of the founding of St. Louis."

the following quotation from the General Chairman's letter of December 6, 1961 (Carrier's Exhibit G):

"* * * The employes of this Carrier's Signal Dept. have a contractual right to perform any and all signal work for this Carrier. There are no exceptions in the agreement to permit the Carrier to contract with any party to perform signal work and if the Carrier contracted with the City or other parties for such work to be performed by other than its Signal Dept. employes, then it violated the agreement."

Additionally, the Employes alleged many variations or extensions of the same charge but for the reasons explained their position is completely without foundation as the Carrier had absolutely no control over nor any voice in the contracting of work on the property in question which was and is a National Park owned and controlled by the Federal Government.

There was no violation of the Signalmen's Agreement and the claims should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: By appropriate legal documents it was agreed that National Park Service, an agency of the United States of America, would contract for construction of trackage, through tunnels and below grade, with signalling and related facilities, on and through land part of the Jefferson National Expansion Memorial in St. Louis, Missouri, and upon completion would grant an easement to Carrier to use of the trackage. As part of the consideration Carrier agreed to transfer to the Government all its rights, title and interest to a segment of its elevated tracks paralleling the Mississippi River; this to be effective upon the date when Carrier first enjoyed the easement.

Petitioner claims that Carrier violated the Agreement in that employes covered by the Agreement did not install the signalling equipment on the trackage to which the easement was to run.

The record makes clear that the construction of the trackage involved and installation of the appurtenant signalling equipment was the exclusive obligation and solely within the control of the Government Agency. Otherwise stated, Carrier did not have or exercise any control over the construction of the trackage or installation of the signalling equipment. It was vested with no interest until the work was completed and the easement ripened.

The scope of the Agreement is confined to work on Carrier's property or elsewhere within Carrier's control. Inasmuch as neither of those conditions existed in this case, the Claim is without merit.

Award No. 6782, upon which Petitioner relies, is inapposite in that the carrier in that case, unlike in the instant case, was vested with a right to exercise control.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.