

Award No. 14256
Docket No. SG-12206

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**GALVESTON, HOUSTON AND HENDERSON
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Galveston, Houston and Henderson Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it assigned section forces who hold no seniority or other rights under the Signalmen's Agreement to perform a total of eighty-five (85) hours of signal work on September 10, 11, 14, and 15, 1959, in connection with repairing highway signals at Bowie Street.

(b) The Carrier now be required to compensate Signal Maintainer J. T. Harrison for eight-five (85) hours at his regular rate of pay of \$2.54 per hour because of this violation. (Carrier's File: 29)

EMPLOYEES' STATEMENT OF FACTS: As indicated by the Statement of Claim, this dispute is based on the Carrier's action of assigning section forces who hold no seniority or other rights under the Signalmen's Agreement to perform signal work in connection with repairing highway crossing signals at Bowie Street.

Under date of August 4, 1959, Mr. H. E. Smith, President and General Manager, wrote the following letter to Mr. J. T. Harrison, Signal Maintainer, the claimant in this dispute:

"The following material was shipped to you by truck today:

FOR BOWIE STREET

- 1 — 12 foot, 5 inch Mast.
- 1 — Base

Claimant is regularly assigned as Signal Maintainer eight hours per day five days per week, except designated holidays, Monday through Friday, to the territory from MP 0.00, Houston, Texas to MP 13.00, with home station at Harrisburg, Texas, MP 5.8. He worked and was paid for working his regularly assigned hours on each of the dates involved in this claim.

September 10, 1959, two section laborers worked 6 hours 30 minutes each or 13 hours, and September 11, 14 and 15, 1959, three section laborers worked 8 hours each date or 24 hours each during regular assigned working hours assisting Claimant in burying underground wiring in connection with the renewal of flashing signal at Bowie Street, Houston, Texas.

Claimant presented claims for 13 hours September 10, 1959, and 24 hours each date September 11, 14 and 15, 1959, or a total of 85 hours, in addition to eight hours worked and paid for each date, at his regular rate of pay of \$2.54 per hour, or the equivalent of 3 or 4 hours' or days' pay for one hour's or day's work each date involved, account section laborers allegedly performing signal work in violation of the scope rule of the controlling agreement. The claims were declined by the Carrier as the Agreement was not violated and does not support the claims.

Attached hereto and made a part hereof, as Carrier's Exhibit A, is copy of Forms 5072 from Claimant and correspondence exchanged by the parties in handling these claims on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we should observe that a charge, during handling of this case on the property, that Carrier's letter denying the claim does not meet the requirements of Article V-1(a), has been overruled by prior awards of this Board.

On the merits of the case we believe the Organization's evidence here warrants a finding on our part that Carrier's action did violate the agreement.

The Organization here seeks compensation for Signal Maintainer J. T. Harrison for 85 hours at his regular rate of pay of \$2.54 per hour because of the violation.

It is a fact that during the time the work subject to claim was being performed, Claimant Harrison was performing his duties as signal maintainer and was being so compensated.

We have held, in numerous cases before this Division that, absent a specific agreement to the contrary, an aggrieved employe was entitled to compensation only for such monetary loss suffered as a result of Carrier's action. Awards 7839, 8024, 8510, among many others.

We can and do award Claimant the difference between the signal maintainer's rate and a foreman's rate for the time actually spent in supervising the work performed by the Maintenance of Way Employees assigned by the Carrier to do the work.

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 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 Agreement was violated.

AWARD

Claim of agreement violation sustained. Claim for damages disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.

DISSENT TO AWARD NO 14256 DOCKET NO. SG-12206

The Majority, the Referee and the Carrier Members, have, by adopting Award No. 14256, established with finality that the Scope Rule of the controlling Agreement does reserve to the covered employees all work related to the signals, signal systems, etc., covered by the rule. The Majority further recognizes that such reservation is not limited by the degree of skill or lack thereof required to execute such work, and that, one such a violation is established, damages do flow. It is, however, in the area of damages that they err.

The record clearly establishes and Award 14256 agrees that the Carrier did cause its track forces to perform 85 hours of work which it had contracted and agreed to reserve to its signal forces. It is a fact that the controlling Agreement makes no exception to that reservation. The Majority states:

" * * * an aggrieved employee was entitled to compensation only for such monetary loss suffered as a result of Carrier's action."

Having thus acknowledged, they then ignore their finding that the claimant lost the opportunity to perform 85 hours signal work and to collect 85 hours pay therefor.

The award fails to meet the standards of a responsible decision for several reasons; first, the statement of claim requests no like correction; secondly, the remedy is only partial, and thirdly, no such defense was proffered by the Carrier.

Award No. 14256 is in error; therefore, I dissent.

W. W. Altus
For Labor Members
4/6/66