

Award No. 14262
Docket No. SG-12256

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 seventy-six (76) hours of signal work on November 5, 6, 9, 10, and 11, 1959, in connection with highway crossing signals at Gable Street.

(b) The Carrier now be required to compensate Signal Maintainer J. T. Harrison for seventy-six (76) hours at his regular rate of pay of \$2.57 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 highway crossing signals at Gable Street. The work was part of a project of renewing crossing signals with more modern flasher light signals on various street crossings within the city limits of Houston, Texas.

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 ft.-5 in. Mast
1 — Base

between Houston, Texas and Galveston, Texas. Two Signal Maintainers only are normally employed in the Signal Department and are regularly assigned eight hours per day, five days per week, except designated holidays, Monday through Friday, rest days Saturday and Sunday.

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 13.0, 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.

November 5, 6 and 10, 1959, two section laborers worked eight hours each date, or 48 hours, and November 9 and 11, 1959, two section laborers worked seven hours each date or 28 hours during regular assigned working hours assisting Claimant in burying underground wiring in connection with the renewal of flashing signal at Gable Street, Houston, Texas.

Claimant presented claims for 16 hours each date November 5, 6 and 10, 1959, and 14 hours each date November 9 and 11, 1959, or, a total of 76 hours, in addition to eight hours worked and paid for each date, at his regular rate of pay of \$2.57 per hour, or the equivalent of 3 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: The issue in this case being identical with that involved in our award in Docket No. SG-12206, we will sustain the Organization's claim that Carrier's action did violate the agreement.

Organization is here seeking payment for the Signal Maintainer for 76 hours because of the violation.

As we noted in SG-12206, it is a fact that during the time the work subjected to claim was being performed, Claimant J. H. Harrison was performing his duties as signal maintainer and was being so compensated.

We will hold here, as we did in SG-12206 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 and 8510, among 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 is sustained.

Claim for damages disposed of in accordance with 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. 14262, DOCKET NO. SG-12256

Our dissent to Award No. 14256 is equally applicable here.

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