

Award No. 15466
Docket No. SG-15087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific
Railroad Company—Fort Worth and Denver Railway
Company (Burlington-Rock Island Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company:

On behalf of Signal Maintainer J. C. Haynes, Corsicana, Texas, for pay at his straight time rate, as follows: four (4) hours on February 14, 1963; twelve (12) hours on April 11, 1963; ten (10) hours on April 12, 1963; one (1) hour on April 17, 1963; and one-half ($\frac{1}{2}$) hour on May 10, 1963, account other than signal employees leaning poles and moving a telephone box to permit the operation of a drag line. [Carrier's File: Jt SG-23]

EMPLOYEES' STATEMENT OF FACTS: This dispute is based on the performance of certain work by other than signal forces. Specifically, employees not covered by the Signalmen's Agreement "leaned" poles and moved a telephone box. Claimant maintains the pole line and telephone in question. The disputed work was performed to permit the operation of a drag line. The record will show that the Carrier has not denied that the disputed work accrued to signal employees, but that it denied the claim on the basis the Claimant should have performed it because he allegedly had advance information about the operation of the drag line.

Claimant initiated the claim by filing a Statement of Overtime Worked, Form 155-JT, for each date mentioned in our Statement of Claim. In denying those time slips, the Carrier's Auditor, Mr. H. B. Loftis, asserted Claimant had advance information of the necessity of this work. The Auditor's denials, presented on Form 351, "Notice of Time Slip Correction and Notice of Time Claims Declined", were dated May 21, 1963. On May 17, 1963, the Carrier's Signal and Communications Supervisor wrote to Claimant, denying the overtime slips, giving the same reason as that subsequently given by the Auditor.

Under date of June 25, 1963, the Brotherhood's General Chairman presented the claim to Carrier's Road Foreman of Equipment-Trainmaster, Mr.

Copy of Form 156-JT, which is a form not applicable to signal maintainers but which the claimant nonetheless used in making the claim and bearing his signature, is attached as Carrier's Exhibit No. 5.

Two or three days prior to February 12, Track Supervisor W. P. Moore, an official of the Joint Texas Division, contacted the claimant personally and advised him that it would be necessary for him to lean some poles. The claimant did not do as he was instructed. The poles were leaned by the section foreman, as stated by claimant, "SO DRAG LINE COULD OPERATE."

Two, three or four days prior to April 11 and 12, Track Supervisor Moore contacted the claimant personally and advised him it would be necessary for him to lean some poles in the vicinity of Mile Post 258-259. The claimant did not do as he was instructed. The poles were leaned by Bardwell section crew, as stated by claimant "SO DITCHER COULD WORK" and "SO DRAG LINE WOULD BE ABLE TO WORK."

A few days prior to April 17, Track Supervisor Moore personally contacted W. E. Harris, a signal maintainer who has principal responsibility for maintenance of telegraph and telephone circuits, and advised him to move the telephone box. Signal Maintainer Harris did not do as he was instructed. The telephone box was moved by one member of a section gang for the reason, in the words of Claimant Haynes, who seized upon an opportunity to make a claim: "SO DRAG LINE MIGHT WORK, IN CLEANING OUT DITCH."

On May 10, Section Foreman Louis Lopez, while enroute on track car, noticed telephone pole at Mile Post 238.21 broken off at ground level and leaning at an angle of about 45 degrees. The section foreman dug a hole sufficient to put the pole in place to hold it up to prevent damage to the communication lines fastened thereto. This was an emergency repair performed by the section foreman of his own free will and accord. The claimant was notified so that permanent repairs could be made and he thereafter made a claim as indicated.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim before us in this Docket is in behalf of Signal Maintainer J. C. Haynes for pay at his straight time rate (the hours vary) "for other than Signal Maintainers" performing work which the Organization maintains is signal work.

It is clear from the record that in the instances here subjected to claim, Track Supervisor Moore notified the Signal Maintainer involved that it was necessary to move a telephone box; that it was necessary to lean poles, and that it was necessary to realign a pole to remove pressure from the wires.

The work project then in operation on the mainline was a ditching operation to improve and correct water drainage on the roadbed and the right of way terrain. In each instance, Carrier Supervision notified the Signal Maintainer so that the necessary work could be done without impeding the work of the project.

In each instance, as the record shows, the Signal Maintainer failed to do the work required; and, when a Carrier official asked men of other crafts to do it, and it was completed, the Claimant filed a claim for compensation.

If violation of the Agreement occurred here, it was through the contributory negligence of the Signal Maintainer. That being so, he cannot now be heard to plead for compensation for work he failed to perform.

With respect to the claim for May 10, 1963, the Section Foreman, while enroute on a track car noticed a telephone pole at Mile Post 238.21 broken off at ground level and leaning at a 45 degree angle. He stopped and dug a hole sufficient to hold the pole up so communication lines would not be damaged, and notified Claimant to make permanent repairs. We find no rules violation in that.

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 Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.