



Award No. 15499
Docket No. SG-15003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al, that:

(2) The Carrier violated the current Signalmen's Agreement, as amended, on the CNO&TP Division, Supervisor W. E. Waters' territory, when a contractor and his force consisting of from one to six men worked some 453 hours during the period between May 6 and May 29, 1963, for 20 days or more including Saturday May 25 and Sunday May 26, performing the signal work of digging and filling a ditch for signal cable.

(b) The Carrier be required to compensate the signal employees working in the locality in Mr. J. A. Watts' gang, who assisted the contractor and his force to the extent that they laid the cable in the ditch after it had been dug, at their respective hourly rates of pay, on a proportionate basis, for all hours (approximately 453) that were worked by the contractor and his force during the period mentioned above, at the pro rata rate for what would have been regular assigned working hours for the respective signal employees; with overtime rates for what would have been overtime hours for them; claim to continue until the proper correction is made to eliminate the violation of the agreement. The signal employees involved in this claim are, as follows:

J. A. Watts, Foreman
W. H. Denney, Leading Signalman
J. W. Headden, Signalman
W. F. Carson, Signalman
J. Carson, Assistant Signalman
H. Singleton, Assistant Signalman
N. D. Carter, Assistant Signalman
A. L. Roman, Signal Helper
A. McFalls, Cook

(c) The Organization be permitted to have a record of the time for which the contractor was paid, or total amount paid, if and when claim is sustained, in order to make proper settlement with the signal employees involved.

EMPLOYEES' STATEMENT OF FACTS: This dispute, like numerous others from this property which have either been decided by this Division previously or are awaiting adjudication, involves signal work which Carrier contracted out to persons not covered by the Signalmen's Agreement. During the period between May 6 and May 29, 1963, for 20 or more days a contractor and his force numbering from one to six at different times devoted some 453 man-hours digging and backfilling an underground trench in which signal cables were installed. This work was in connection with a signal construction program incidental to changes being made by Carrier in the line of road between Tateville and Greenwood, Kentucky, on the CNO&TP Division.

The facts are not in dispute; the work was performed by a contractor and his force not covered by the Signalmen's Agreement during the period stated above. A ditch for signal cable was dug and backfilled with machinery and equipment operated by the contracting company's employees, over a period of several days in May including at least one Saturday and Sunday when Carrier's employees were not allowed to work.

During the handling, both in correspondence and in conference General Chairman Melton repeatedly called Carrier's attention to the fact that it had sufficient machines and equipment in its own Signal and Electrical Department to have the work performed by Signalmen. Brotherhood's Exhibit Nos. 1-6 are pictures of some of that equipment. The exhibits are self-explanatory and show that the Carrier's equipment is capable of burying cable at depths of 18 or more inches in any terrain including that which contains large rocks or boulders.

Pertinent correspondence relative to the handling of this case on the property has been reproduced and attached hereto. It is identified as Brotherhood's Exhibit Nos. 7-12. The original claim is Brotherhood's Exhibit No. 7, dated July 5, 1963.

As indicated by the correspondence quoted and cited above, this dispute has been handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date for rules of February 16, 1948, and rates of pay effective September 1, 1947, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claim alleges violation of the current signalmen's agreement because Carrier contracted for use of special machines, equipment, skills and materials to dig a trench and backfill it after special armored and conventional CTC code cable had been laid therein by signal forces. It demands that Carrier be required to compensate 9 persons for unnamed amounts on unidentified dates at straight time rates for time not worked. Claim involves only part of trench approximately 48,000 feet in

All grading for the six projects was contracted. Heavy grading equipment and other heavy duty machines were used by the contractors. The work of digging the new tunnels and enlarging the one existing tunnel was contracted. As most of the cuts and new tunnels were through solid rock, explosives were used extensively.

Railway forces constructed new track over the fills, through the cuts and tunnels, and over bridges constructed by contract.

Carrier's signal forces installed signals and CTC on the approximately 25 miles of newly constructed track.

One of the grading contractors on the project was S. S. Purcell Jr. Company, Broadhead, Ky. Because of the heavy boulders and sharp rocks through cuts and on fills in the area between Tateville and Greenwood, it was decided that a specially designed armored CTC code cable should be installed in the ground for 15,000 feet to carry CTC circuits, which prior thereto were carried on pole lines, and to install conventional armored cable in the ground for the remaining distance of 33,000 feet. It was out of the question to even consider having the trench for the armored cable dug manually with picks and shovels, or with any ditch digging machinery which Carrier owned. Carrier-owned machines were not suitable for the job. They were too light. Furthermore the special armored cable would not go through the company-owned plow. Moreover, the time in which the work had to be performed was limited. In this situation Carrier contracted with S. S. Purcell Jr. Company to excavate a ditch approximately 12 inches wide, 18 inches deep and 10 feet west of the center line where track No. 2 would be located on the grade and through the cuts and over the fills between Tateville, Ky., milepost 170, and Greenwood, Ky., milepost 179, for a distance of approximately 9 miles.

On December 27, 1962, the contractor began digging the trench for the armored cable with special heavy duty machines. The contractor used a heavy trenching machine. In some areas where the trenching machine could not be used a backhoe machine was used in removing the heavy boulders, some of which had been hauled in by the contractors for sub-grade. Explosives were also used in blasting out some of the rock.

After the trench was dug Carrier's signal employees laid the armored cable in it. The contractor hauled dirt and screenings to the scene and distributed them. Carrier's signal forces shoveled in the trench on top of the cable as a cushion approximately 2 inches of dirt and screenings, after which the contractor's machines filled the trench covering the cable. The referred to work was completed on May 28, 1963. This was before train operations over the new track began.

The six construction projects were completed and the new line was opened for train operations in July 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim involves the same parties, and insofar as they are controlling, the same facts and principles as the case in Award No. 15498. We decide it in the same way.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1967.