

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Bill Heskett, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**SOUTHERN RAILWAY COMPANY**

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

(a) Carrier violated the current Signalmen's Agreement, as amended, when, on September 30, October 4, 5, 6, 8, and 26, 1965, contractors performed recognized signal work in connection with the installation of underground signal cables and crossing signal foundation at or near Mile Post 209.1, Gretna, Virginia.

(b) Carrier be required to pay Signal Maintainer L. C. Dellinger, Jr., for all man-hours worked by contractors or other persons who have no seniority or contractual rights to perform signal work. Claim to be paid at Mr. Dellinger's overtime rate, in addition to any pay which he has already received. (Carrier's File: SG-22859)

**EMPLOYES' STATEMENT OF FACTS:** This dispute like others from this property, of which some have been decided by the Division and several are awaiting adjudication, involves the performance of Signal Work by persons not covered by the Signalmen's Agreement.

In connection with the installation of highway crossing signals at or near Mile Post 209.1, Gretna, Virginia, Carrier let out to two different contractors parts of the Signal Work involved.

On September 30, October 4, 5, 6, and 8, 1965, Creger Well and Pump Company dug a 2,926 foot trench and backfilled it after two Signal Maintainers had installed Signal Cable in the trench.

On October 26, 1965, Contractor J. B. Pickeral dug holes and backfilled them after the Signal Maintainers assembled and installed Signal Foundations in the holes.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim by Signal Maintainer L. C. Dellinger, Jr., was presented to Signal & Electrical Supervisor P. B. Robinson in a letter, dated November 22, 1965, which has been reproduced and identified as Brotherhood's Exhibit No. 1.

4, 5, 6 and 8 by Creger Well and Pump Company digging a trench 2,926 feet in length at Gretna, Va., and for time worked on October 26, 1965 by J. B. Pickeral, contractor, excavating for a crossing signal foundation at Gretna, Va.

There is no basis for the contention which you now make. The letter of November 22, 1965 addressed by Signal Maintainer Dellinger to Mr. P. B. Robinson speaks for itself. Nowhere therein did he even imply that he was claiming pay at the rate of time and one half. You are responsible for attempting to assert a monetary claim at the time and one half rate. This you did when attempting to appeal the claim presented by Mr. Dellinger. The claim for pay at the time and one half rate is clearly barred, and as I have previously indicated, we are not waiving the bar.

I am not willing to pay Mr. Dellinger any amount because, as evidenced in the record, he was on duty and under pay when the claimed work was performed and was not adversely affected in any manner whatsoever, nor was there any agreement violation. I therefore reaffirm my previous declination of the claim, and in doing so again remind you of the fact that your organization has been unsuccessful in attempting to exact penalty payments in circumstances such as here involved."

**OPINION OF BOARD:** There is no question that the work here involved, installation of underground signal cables and crossing signal foundation, was reserved to the Organization under the Scope Rule. It was not proven by Carrier to be a "large installation" and thus, the work was not within the exception. See Awards 15497 (House); 15874 (Miller); and 16322 (Dugan).

The Carrier violated the Agreement but we will sustain the claim only on a pro rata basis. See Award 15888 where the present referee acted as the neutral.

**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 violated by the Carrier.

#### AWARD

Claim sustained as modified.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1968.

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