

Award No. 16496
Docket No. SG-17118

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railway Company:

On behalf of Signalman G. S. Blair, Jr., for sixty-five (65) hours' overtime pay account forces of contractor, J. R. Plake, Inc., performing work in connection with installation of highway crossing protection devices at Douchet, Madison and Van Buren Streets in Beaumont, Texas, on February 17, 18, and 21, 1966. [Carrier's File: 013.31-80]

EMPLOYES' STATEMENT OF FACTS: This claim arose because Carrier arranged for a contractor to dig trenches for the installation of conduit, wires and junction boxes for use in connection with highway crossing protection devices in Beaumont, Texas.

The disputed work was performed in February 1966. Claim was initiated March 7, 1966 on the basis Carrier's action constituted a violation of the Classification Rules, the Scope, and a Memorandum dated May 10, 1944. It was subsequently handled to a conclusion on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 9. Not shown are brief letters involving time limits and/or the General Chairman's requests for conference.

Despite Section 2, Sixth, of the Railway Labor Act, which reads:

"In case of dispute between a Carrier or Carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such Carrier or Carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the Carrier

2. Also at Kansas City, Missouri, other forces worked on the Broadway-Woodswether gates installations in 1951, and those forces fabricated the gate bracket, excavated dirt, set foundations and poured the concrete, set the junction boxes and installed 40 feet of steel pipe and 220 feet of fiber conduit.

3. Contractor forces installed the conduit and man-holes into the Beaumont Depot and in addition, other forces installed the conduits for the Heavener CTC building.

4. In 1962-63, an outside contractor broke the street pavement and installed conduits under 15th Street and replaced the pavement. They installed 170 feet of 2-inch pipe and 340 feet of 4-inch pipe. (Kansas City.)

5. Other forces removed the Asbury cantilever and transported same to Pittsburgh.

6. In 1944-45, the bungalow on the Beaumont to DeQuincy CTC system was set by other forces and since that time, the flashers and cases along Gilbert Street were removed by contractor forces who also removed and hauled away the cantilever foundations.

7. On the Gulfton-McElhany project in 1945, the telegraph gang assisted our signal forces in the foundation work and the setting of the signals and in addition, the Western Union gang installed signal cross-arms, anchors and guys for the automatic signals, Gulfton to McElhany.

8. State Highway Department forces assisted with the Neches Junction flasher in 1961 and the files also contain numerous instances where grading and dirt work has been performed by others.

9. Contractor forces broke some 300 feet of concrete sidewalks and streets and excavated 400 feet of channels in connection with the installation of crossing protection devices at McNeil Street and Louisiana Avenue, Shreveport, Louisiana, during September and October, 1964.

NOTE: The above is not a complete list but was developed as result of a spot check of the records.

OPINION OF BOARD: This Claim was declined by Carrier's highest designated officer on July 25, 1966. Under the provisions of Article V, Paragraph (c) of the National Agreement dated August 21, 1954, the claim became barred unless proceedings were instituted before this Division of the NRAB by April 25, 1967. Those proceedings were not instituted until June 21, 1967.

In a letter dated April 10, 1967, Carrier's highest designated officer referred to a conference held on March 29, 1967, at which the Claim was discussed, and reaffirmed his declination of July 25, 1966; no mention was made in this letter that any extension of the time limits had been granted the Organization.

In a letter dated April 30, 1967, Organization's General Chairman claimed that during the conference on March 29th Carrier officials Hanson and Scheil

had promised to give the Organization a letter extending the time limits by ninety days. On May 2, 1967, Carrier replied:

"... Our records show that claim was declined by the undersigned in a letter dated July 25, 1966, declined in conference March 29, 1967, and that on April 10, 1967, I confirmed conference advising that my declination of July 25, 1966, was reaffirmed. Neither Messrs. Hanson nor Scheil have any recollection or knowledge of any discussion concerning extending the time limit of this claim.

If my letter did not properly reflect your understanding with respect to extending the time limit, **you should have written me promptly so that the matter could have been handled before April 25, 1967, on which date the time limit expired.** As you know, I am not adverse to giving extensions provided request is made prior to date claims are barred under the governing rule." (Emphasis ours.)

The soundness of the emphasized statement is proved by the state of the record here resulting from Organization's failure to act according to it. We have an affirmation by Organization representatives that the extension was promised and granted at the March conference, and we have a denial by Carrier representatives that any extension was promised or granted. We are in no position to resolve this conflict as to fact. Since the alleged fact is essential to the viability of Organization's case, it was incumbent on the Organization to establish it firmly while the case was still clearly on the property. In this case we cannot find from the record that any extension of time was granted.

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 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 Organization failed to institute proceedings before this Board timely under Article V, Paragraph (c) of the National Agreement dated August 21, 1954.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1968.

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