

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the scope, hours of service, overtime, seniority, promotion, bulletining and assignment rules, when, beginning about March 1, 1963, it assigned and/or permitted employees not classified in or covered by the Signalmen's Agreement in effect on this property to perform work in connection with the installation and construction of signals and associated apparatus on approximately thirteen (13) miles of railroad — such work having been performed in connection with construction of a dam near Del Rio, Texas.

(b) The Carrier be required to compensate all assigned gang men on the San Antonio Division, namely:

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| L. D. Cowan | R. E. Ralph |
| D. D. Sprott | G. P. Waites |
| C. N. Guyger | W. Guilbeau |
| M. H. O'Bryant | E. M. Vancleave |
| L. H. Carroll | E. F. Baca |
| L. C. Raske | L. H. Hendershot |
| P. R. Norman | Pablo Ortiz |
| Robert Mouton | E. Lillie, Sr. |
| Edwin Lillie, Jr. | L. A. Matheaus |
| J. M. Cavasas | E. B. Loden |

and the Signal Maintainer (T. J. Rand) who is assigned to the Del Rio District, on a proportionate basis for all man hours worked by outside employees in performing the signal work cited in paragraph (a); such compensation to be at their respective overtime rates of pay.

"BETTERMENTS

Sec. 9. The Railroad agrees that the relocation to be accomplished under this contract will provide the railroad with facilities equal in service and utility to those now in existence * * * (Emphasis ours.)

"RELEASE

Sec. 11. The Railroad agrees, on completion of the relocation work performed by the United States and adjustment of accounts and payment pursuant thereto, all as provided for herein, to accept the work performed by the Government as full and just compensation * * * (Emphasis ours.)

The United States Government proceeded with the acquisition of the necessary right of way, and entered into agreements with various contractors for the building of a railroad line, equal in kind and quality, to that existing and owned by the Carrier. The line was completed and the first train was operated over the new route on April 23, 1963. The United States Government then conveyed title and ownership of the relocated line to the Carrier, who in turn conveyed title and ownership of the former line to the Government.

A print, showing the locations of the old and new line is attached as Carrier's Exhibit No. 1.

By letter dated April 27, 1963, General Chairman R. B. Smith of the Brotherhood of Railroad Signalmen presented claim for pay for various employees, specified in the letter, contending that they should have been used to install the signal system and appurtenances on the relocated line. This claim was handled in the usual manner up to Carrier's Manager of Personnel where it was declined. (Carrier's Exhibit No. 2.)

On February 17, 1964, Carrier was furnished a copy of President Jesse Clark's letter of the Brotherhood of Railroad Signalmen, addressed to Executive Secretary Schulty of this Division, advising that ex parte submission would be filed by that Organization on March 18, covering this unadjusted dispute.

There is in evidence an agreement between the Carrier and its employees represented by the petitioner, bearing effective date of July 1, 1953, a copy of which is on file with the Board and is hereby made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as the result of the construction of Amistad Dam on the Rio Grande and the resulting need to relocate Carrier's right of way and facilities to avoid inundation. In an agreement with the Government, the Carrier agreed to accept in exchange for its old property a new right of way and associated facilities "equal in kind and quality to that now existing"; the Government retained for itself the right to "perform all work and furnish all labor, * * * necessary to relocate the facilities of the Railroad" including signals. The Government required the Carrier to "perform all labor * * * to integrate the signal system constructed by the Government with the signal system of the Railroad." The record indicates that the latter work was performed by the Carrier's Signal employees.

As to the work which is the subject of this claim, we find that the principle involved is the same as that which was controlling in Awards 13857, 13745, 13746, and others. The facts in the instant case are readily distinguishable from those in Award 6782. So finding, we must deny the claim.

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 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 18th day of April 1967.