

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

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) On August 10, 1964, Carrier arbitrarily violated the current Signalmen's Agreement, as amended, when it arranged for and/or otherwise permitted outside persons who are neither covered by the Agreement nor hold seniority or other rights under the Agreement (Fairfield Electrical Co-Op of Winnsboro, South Carolina) to dig three (3) poles and set three (3) 65-foot poles in the signal transmission line at Mile Posts R-67.7 and R-69.5 on the territory of Signal Maintainer D. L. Johnson.

(b) Messrs. D. L. Johnson, T. B. Lindsay, J. L. Holsenback, Jr., and P. G. Lotshaw be compensated at their respective hourly rates of pay, on a proportionate basis, for eight (8) hours each on August 10, 1964, in addition to what they were paid on that date, but not less than four (4) hours each at their overtime rates of pay, for the signal work performed by the outside employees in direct violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: This dispute, like numerous others from this property which have been decided by this Division or are awaiting adjudication, involves Signal Work which Carrier contracted out to persons not covered by the Signalmen's Agreement.

Sometime prior to August 10, 1964, an inspector for A. T. & T. reported Carrier's poles supporting the 4,400 volt Signal Transmission Lines which cross communication lines at Winnsboro, South Carolina, were defective and unsafe.

Carrier ordered and had shipped to Winnsboro the three poles necessary for the replacement. Furthermore, it arranged to have the work done in part by Fairfield Electrical Co-op; the rest it assigned to four Signal Maintainers. On August 10, 1964, three (3) employees of the contracting company, working between the hours of 8:00 A. M. and 3:00 P. M., dug holes for and set three (3) new poles in the Signal Transmission Lines at Mile Posts R-67.7 and

OPINION OF BOARD: The Organization's contention that Carrier violated the Scope of the Agreement when it contracted out the replacing of three 65 foot signal transmission poles is well taken and in accord with the previous opinions of the Board between the parties interpreting the same contractual provision. See Awards 9749 (McMahon), 11733 (Stark), 15624 (McGovern), and 15874 (Miller) involving these same parties.

Carrier strenuously contends in its submissions and in the panel discussion that Claimants suffered no loss and that they are not entitled to damages. This question is in conflict and it would appear that this Board has established exhaustive precedents "pro and con" in Awards 15624 (McGovern) and 15689 (Dorsey). However, the Board in Award 15808, wherein the present referee acted as the neutral, held that "... our requiring Carrier to pay Claimants ... is a consequence, not a penalty, and it need not be for work performed—it is primarily to enforce the Agreement" and Awards 10051 (Dugan) and 11984 (Rinehart) were cited as authority therefor. This holding was in general accord with the Dorsey Award. We affirm these positions on the basis that they are the more meritorious views in consideration of the foundational concepts of collective bargaining and the enforcement of the parties' agreements.

Yet, we do not hold that the amount prayed for by Claimants should be fully allowed. As Referee Miller pointed out in Award 15874, hereinbefore cited, "... there is an abundance of precedential authority to support allowance of the pro rata time claimed herein" but the awards do not support sustaining claims under the theory of damages suggested by Claimants. Therefore, we will sustain the claim but modify same, granting each Claimant his pro rata share of the number of hours contracted out by the Carrier.

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 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 violated.

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 27th day of October 1967.

**CARRIER MEMBERS' DISSENT TO AWARD 15888,
DOCKET SG-15851 (Referee Bill Heskett)**

Award 15888 is erroneous both on the merits and the issue of damages.

The majority opinion holds that Carrier violated the scope of Signalmen's Agreement when it used contractor's machines and machine operators to replace three 65-foot power line poles during a four-hour period when claimants were on duty and under pay at the location where the new poles were installed. Claimants detached the lines from the old poles and secured them to the cross-arms of the new poles. As was the case in Award 15624 (McGovern), the record in this case showed that claimants were merely onlookers while contractor's machine operators dug the holes and set the new poles in place; they obviously would not have earned any additional compensation even if they had been used to operate the machines.

Dissents of Carrier Members to Awards 13236, 15689 and 15874, involving the same parties, are by reference incorporated in this dissent.

**R. A. DeRossett
W. B. Jones
C. H. Manoogian
J. R. Mathieu
W. M. Roberts**