

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Milton Friedman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when the 'Carrier contracted for the removal of crossing timbers, cribbing of the track in the crossing area to the bottom of the ties, installation of new crossties under the rails in the crossing, installation of the drainage pipe on each side of the rail crossing under the highway or road, backfilling the crossing area with ballast to provide temporary highway surface after transporting the ballast to the area, opening the crossing ahead of the rail laying gang, backfilling the crossing behind the rail laying gang and provide a temporary highway surface, opening the crossings ahead of the tamping machines, installing crossing timbers immediately behind the track lining machines after backfilling the crossing, repaving the crossing where paving was required and performing the necessary clean-up work. Work of the type referred to was performed by contract at 40 crossings on both the southbound and northbound main tracks.'(Carrier's file MW-22657)

(2) Extra Gang Foreman L. A. Hughey and Track Laborers P. G. Lofton, J. Thomas, Rufus Branch and A. Moore each be allowed pay at their respective rates* for an equal proportionate share of the total number of hours consumed by outside forces in performing the work described in Part (1) of this claim.

(*) straight time rate for straight time hours worked by contractor's forces.

time and one-half rate for overtime hours worked by contractor's forces."

EMPLOYES' STATEMENT OF FACTS: During the period between February 21 and March 27, 1965, the work described within Part (1) of our Statement of Claim was assigned to and performed by contractor's forces who held no seniority under the provisions of the Agreement. The hours consumed by the contractor's forces in the performance of said work were accurately set forth within the letter of claim presentation as follows:

For the record, Claimant L. A. Hughey resigned from the service and accepted an annuity under the Railroad Retirement Act effective July 27, 1966. Claimant A. Moore died on December 30, 1966 when hit while off duty by a freight train.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that the claim presented to the Board is not the same as that handled on the property. This is apparent on its face, as comparison of the two indicates. The issue to be resolved, though, is whether the claim now before us is essentially the same, or substantially different.

When Carrier originally answered the Employees' claim by noting that it referred only to part of the contracted work, the Employees responded that "the work of paving these crossings was not completed for some time following the completion of the above work and cannot be considered as a part of the work for which claim is filed."

The same statement was subsequently repeated on the property, but the Employees then filed with the Board a claim including, among other aspects of the work not previously mentioned, the very paving work it had stated was not within its claim. This is a difference of substance.

Awards cited by the Employees held that a variation in the claim was not necessarily fatal. But in these cases it was because the variation was one of form and not substance. However, where the change is substantial denial Awards have been made. Award 14258, for example, states:

The Board has consistently held that, where there is a substantial variance between the claim handled on the property and that presented to the Board, we cannot resolve the dispute. See Awards 4346, 5077, 6692, 10193 * * *.

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 respectfully 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 Claim shall be dismissed.

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 April 1968.

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