

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee 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 August 27 and 30, 1965, Contractor Andrews with back-hold loader and plow and one man were used for the purpose of installing cable in connection with the installation of overlay track circuit at or near Platt Springs Road, Columbia, South Carolina.

(b) Carrier be required to pay Crossing Signal Maintainer P. G. Lotshaw eight (8) hours at his pro rata rate in addition to that which he has already been paid. (Carrier's File: SG-22406)

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 overlay track circuits at or near Platt Springs Road, Columbia, South Carolina, it was necessary to bury underground signal cable.

Signalmen were assigned to the project; however, Carrier arranged for and/or otherwise permitted a contractor to do a part of the work. On August 27 and 30, 1965, Contractor Andrews with one man, a back-hoe loader, and plow installed the underground signal cable. They worked four (4) hours each on both days in the performance of this work.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim by Vice General Chairman G. F. Harper, on behalf of Crossing Signal Maintainer P. G. Lotshaw, Columbia, South Carolina, was presented to Signal & Electrical Superintendent L. C. Brown in a letter dated October 10, 1965, which has been reproduced and identified as Brother-

plowed in the cable. Signal Maintainers Lotshaw and Holsenback were present at the work site and handled the cable as it was plowed in the ground by the cable plow.

As I explained in our conference, the claimant is a protected employe under the mediation agreement of April 3, 1965, and has been paid all the compensation to which he is contractually entitled. Moreover, he is a monthly rated employe. Claim being wholly without basis and unsupported by the agreement, I confirm my previous declination of the same."

(Exhibits not reproduced.)

OPINION OF BOARD: The facts, which are undisputed, are that in installing a spur track at Cayce, S.C., an electrically operated highway crossing protective device was moved from one side of the track to the other. While installing the electrical cable, Carrier contracted with Andrews Contracting Company to bury the underground signal cable by using a small tractor with a backhoe attached thereto. Claimant herein was present when the work was being done and, in fact, handled the cable as the cable was being buried in the earth.

The Organization's position is that the work involved herein is within the Scope Rule of the Agreement and that the Agreement was violated when Carrier diverted generally recognized signal work to persons not covered by the Agreement.

Carrier's contention is that it did not have available the special equipment required to perform the job and, therefore, was justified in contracting for a machine to pull the cable plow.

This dispute, involving these same parties, and a similar factual situation decided by this Board in Award 15874 (Miller), and it was so held:

"In regard to whether Carrier's action constituted breach of contract, adherence to the rule of stare decisis governs our conclusion that in the instant case the Agreement was violated. Awards 15624, 15062, 14371, and 13236 (among others) have resolved this issue adversely to the argumentation of the Carrier. Since these Awards concerned the same parties, the same collective bargaining agreement, and substantially similar factual situations, a truly applicable stare decisis situation emerges, and it is the duty of the present neutral referee to preserve the consistency of our prior decisions on this property."

See also Award 15497 (House). Therefore, we must find that the Agreement was violated, and the claim will be sustained.

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 Employe involved in this dispute are respectively Carrier and Employes 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.