



Award No. 16323
Docket No. SG-16696

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

On behalf of Messrs. J. A. Watts, J. N. Goff, N. D. Carter, and Jim Carson for pay at their respective overtime rates, on a proportionate basis, for one (1) hour and fifteen (15) minutes to compensate them for the signal work they were denied the right to perform on September 20, 1965, at or near Camp Austin, Tennessee, on the CNO&TP Division at or near Mile Post 251.2 when persons not covered and who hold no seniority or other rights with the Carrier were used to perform the signal work here involved. (Carrier's File: SG-22173.)

EMPLOYEES' 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 a switch in the track at Mile Post 251.2, at or near Camp Austin, Tennessee, it was necessary to complete some 35 feet of trench and install Signal cable and two foundations for a relay case.

Signalmen were assigned to this project; however, Carrier arranged for and/or otherwise permitted a contractor to do a part of the work. On September 20, 1965, the contractor using a back-hoe dug holes for the relay case foundations; he also dug and back-filled some 35 feet of cable trench. He worked one (1) hour and fifteen (15) minutes in the performance of this work.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim by General Chairman E. C. Melton, on behalf of members of the Signal Gang, who otherwise worked on the switch installation at Camp Austin, was presented to Signal and Electrical Superintendent L. C. Brown in a letter dated September 25, 1965, which has been reproduced

The signalmen's agreement was violated when persons not covered and who hold no seniority or other rights with the Carrier to perform signal work, was used or permitted to perform any of the work covered by the agreement, and I will thank you to let me know if you will allow the claim to be paid."

On January 5, 1966 Carrier's Director of Labor Relations replied as follows:

"Reference is made to your letter of November 19 concerning claim on behalf of Messrs. J. A. Watts, J. N. Goff, N. D. Carter and Jim Carson for pay for one hour and 15 minutes at their respective overtime rate on September 20, 1965 because a backhoe was utilized in the completion of trenching and backfilling of the trench after electrical cable had been laid therein.

According to my information, Foremen Watts, Goff and Carter were working at Cardif, Tennessee, making preparation to move signals near milepost 263.8 because of the laying of welded rail. J. W. Headden and Jim Carson, assigned to this gang along with H. L. Childers, signalman, Oakdale, worked at Camp Austin, Tennessee, milepost 251.2 making preparation for a switch to be installed. With the cooperation and direction of Foreman Watts, Messrs. Headden, Carson and Childers were instructed to complete some 35 feet of trench, install a cable and foundations for a relay case. A backhoe was in use by a contractor doing work for the Maintenance of Way Department. The signal employees involved therefore asked for assistance in completing the trench and backfilling it after the cable had been laid therein. The backhoe operator obliged and therefore used the backhoe in digging part of the trench and backfilling it after signal forces had laid the cable. You can thus see that none of the claimants were adversely affected and there was no violation of the signalmen's agreement, nor is there any basis for the monetary claim which you attempt to assert.

Claim being wholly without basis and unsupported by the signalmen's agreement, payment is declined."

The claim presented by the Brotherhood's General Chairman was discussed in conference on February 15, 1966 following which Carrier's Director of Labor Relations wrote the Brotherhood's General Chairman as follows:

"In our conference on February 15 we discussed the claim on behalf of J. A. Watts, J. N. Goff, N. D. Carter and Jim Carson for pay for one hour and 15 minutes at their respective overtime rates on September 20, 1965 because a backhoe was utilized in the completion of trenching and backfilling of the trench after electrical cable had been laid therein by signal employees.

Claim being without any basis whatsoever and unsupported by the agreement, this confirms my previous declination of the same."

OPINION OF BOARD: The facts herein are that a switch was being installed at Camp Austin, Tennessee. Claimant Carson and two other em-

ployes Signalmen H. L. Childers and J. W. Headden were instructed by Signal Foreman J. A. Watts to excavate a 35 foot trench for a cable and relay case foundations. Signalman Childers arranged for the trench to be dug by a backhoe machine, which machine was owned and operated by a contractor who had been doing work for Carrier's Maintenance of Way Department. Claimants Watts, Goff and Carter were working at Cardif, Tennessee.

The Organization's position is that Carrier violated the Agreement when it diverted generally recognized signal work to persons not covered by the Agreement.

Carrier's defense is that Claimants herein are attempting to establish claims for work that they themselves should have performed instead of taking it on their own to secure a machine to do the work and standing by and watching while the machine performed the work they were supposed to do.

A similar factual situation occurred in Award 16106 (Mesigh). There, this Board held:

"The Carrier states that the accompanying employe would have operated the machine had it been available without an operator, and it is not shown that the employe accompanying the trencher performed any other work or service while so engaged."

See also Award 15827 (Ives).

Therefore, since Awards 15827 and 16106 are controlling, we must deny these claims.

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 not violated by Carrier.

AWARD

Claim denied.

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.

**DISSENT TO AWARD NO. 16323
DOCKET SG-16696**

The Majority states that one employe (not here a claimant) arranged for the backhoe machine to perform the work here in dispute, and then with apparent approval (considering its citation from Award No. 16106) cites Carrier's assertion that Claimants herein are attempting to establish claims for work that they themselves should have performed instead of taking it on their own to secure a machine to do the work and standing by and watching.

The Majority has erred. In the first place, it is clear that none of the Claimants was involved in securing the machine, and secondly, that three of the Claimants were not at the work site and therefore could not have been "standing by and watching."

Award No. 16323 is in error and I dissent.

W. W. Altus
For Labor Members
6-13-68