

**NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION**

Clement P. Cull, Referee

**PARTIES TO DISPUTE:****BROTHERHOOD OF RAILROAD SIGNALMEN****MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (Gulf District) that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it transferred the work of constructing concrete signal foundations from Signal Employees at Settegast Yard, Houston, Texas, to other than Signal Employees at Little Rock, Arkansas, beginning some time prior to November 29, 1961.

(b) The Carrier be required to compensate Signal Foreman A. T. Payne, Signalmen Ray Niederhofer and G. S. Drake for twenty-four (24) hours each, at their respective overtime rates of pay each week, beginning sixty days prior to November 29, 1961 (date on which the instant claim was initiated) and continuing until this work is properly returned to the Gulf District and properly performed by Signal Employees. (Carrier's File D-292-40)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is a result of the Carrier's action of transferring the work of constructing concrete signal foundations from signal employees at Settegast Yard, Houston, Texas, to Bridge and Building employees at Little Rock, Arkansas, and is based on our contention that such transfer of signal work is violative of the current Signalmen's Agreement, particularly the Scope because the B. & B. employees who are performing the work hold no seniority or other rights under the Signalmen's Agreement. This type of work has been performed by signal employees since the inception of the current Signalmen's Agreement, and has been considered as being signal work covered by the Scope of that Agreement. In some cases, signal employees had performed such work at the location in the field; in other cases the foundations were constructed at a central point, then transported to the point where installed.

The Brotherhood has been unable to establish the exact date on which the B. & B. employees at Little Rock began to construct concrete signal foundations, but it appears to have been on or about August 1, 1961. The transfer of this work was disclosed when signal foundations were received at Settegast Yard.

This design is lighter in weight yet has more surface for horizontal earth loading and greater resistance to either rotation or overturning.

7. The Carrier began to use the new standard type of foundations in 1957 on the Northern, Central and Southern Districts. The Carrier purchased the new type foundations from Permacrete Products Corp. at first. The Carrier operates a Pile Yard at North Little Rock where concrete piles, bents and other products are poured or use in replacing wooden trestles. The men employed at the yard are in the Carrier's Bridge and Building Department and are experienced in making concrete products. Since the men are experienced working with concrete and a supply of ready-mixed concrete is available, the Carrier started making the new type foundations for the Signal Department in the yard rather than purchase the precast concrete parts from an outside firm. By having all of the work done at one location, only one set of forms is required and greater efficiency can be achieved.

8. On August 17, 1961, the first shipment of the new type foundations left Little Rock for use on the Carrier's Gulf District. Thereafter the Carrier ceased having the barrel type foundations made on the Gulf District and began using the improved type foundations exclusively. Signalmen on the Gulf District, including the claimants, have never made the improved type of precast concrete "sectional" foundations and are not equipped for and are not skilled in this work.

**OPINION OF BOARD:** The record herein clearly shows that the manufacturing of precast concrete foundations for signals was not reserved exclusively for the Employees herein. Thus the record reveals that precast foundations of the so-called barrel type were made at both Carrier's Reclamation Plant in Palestine, Texas by another class of employees and by the Employees herein. Later in 1957 the new standard type of foundations were purchased from outside sources and still later were made at the Carrier's Yard at North Little Rock by another class of employees.

Carrier concedes that the pouring of concrete foundations for signals at the job site has been performed by the Employees herein and they will continue so to perform when the work is done in the field.

It is well settled that the burden of establishing exclusivity of assignment rests with Petitioner. In view of the record the Petitioner has not carried its burden. As the foregoing principle has been so well established by awards of this Board we will refrain from citing awards which so hold.

Claim will be denied.

**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 not violated.

**AWARD**

**Claim denied.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: E. A. Killeen  
Executive Secretary**

**Dated at Chicago, Illinois, this 10th day of December 1971.**