

C O P Y

Dated at Cleveland, Ohio, July 11, 1961.

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 366

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
and)	Case No. 8
TEXAS AND NEW ORLEANS RAILROAD COMPANY)	Award No. 8

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the effective Agreement by failing to compensate System Roadway Machine Operator, Mr. E. Steffens, assigned to Extra Gang 305 of the San Antonio Division at the time and one half rate rather than the pro rata rate for work performed by him between the hours of 4:30 p.m. and 12:30 a.m. each work day beginning July 10, 1960 and continuing thereafter.
2. That the Claimant System Roadway Machine Operator E. Steffens be now reimbursed for the difference between what he received at the straight time rate and what he should have received at the time and one half rate for all services rendered on the work days referred to in Part 1 of this claim.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

This claim stems from the fact that the Carrier unilaterally established a second shift for Extra Gang No. 305 of the San Antonio Division engaged in a tie-renewal program. The Carrier was unable to enter into an agreement with the General Chairman, District Chairman or the Employees' Committee and therefore, unilaterally established a second shift. The Carrier states that it had a right to establish a second shift under Article XV, Rule 4 of the agreement effective June 1, 1950, which provides for changes in starting time of assignment based on actual service requirements.

The Board has found in Case No. 1 resulting in Award No. 1 that the Carrier did not have this right unless it entered into a mutual agreement with the Employees' Committee. The local officers of the Carrier may enter into such a mutual agreement with the Employees' Committee. The Carrier states it was forced to assert its right to meet its actual service requirement by placing the assignment in effect by proper bulletin notice. For the reasons advanced in Case No. 1, resulting in Award No. 1, we find that the Carrier has violated Article XV, Rule 4 and therefore, this claim should be sustained. The claimants shall be paid at the punitive rate for all hours worked after 5:00 p.m. on the dates of the claim.

AWARD: Claim sustained in accordance with the opinion.

(s) Thomas C. Begley

Thomas C. Begley, Impartial Chairman

(s) J. R. Russell - Dissenting

J. R. Russell, Carrier Member

(s) Arthur J. Cunningham

Arthur J. Cunningham, Brotherhood Member