

C O P Y

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 366

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	Case No. 5
and)	Award No. 5
TEXAS AND NEW ORLEANS RAILROAD COMPANY)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the effective Agreement by assigning Tractor Mower Operator Nelson Guidry, at Lafayette, La., to work from 4:00 p.m. to 12:00 Midnight at the pro rata rate of pay beginning August 24, 1959, and continuing for the duration of such an assignment.
2. Tractor Mower Operator Nelson Guidry be now reimbursed for the difference between the straight time pro rata rate of pay allowed him and the time and one half rate of pay which he should have received for this performance of work in overtime hours during the period referred to and continuing until this violation of the Agreement is discontinued or the position abolished.

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.

During the year 1959, the Carrier was confronted with serious problems in its attempt to control vegetation on its right-of-way, due to abnormally heavy periodic rainfall during the warm growing season. Coincident with the abnormal growth of vegetation, local city officials and train crews or members of crews were pressing for better control of the vegetation. The City of Jennings had written to the Carrier in regard to high grass and weeds along the Carrier's right-of-way. Trainmen had complained of the high grass on the curbs at the Alexandria Branch which makes it impossible for trainmen to observe the trains while rounding curves. The conductors of local trains had made complaints concerning the high grass. The Carrier states that the grass was growing fast and the operations of cutting it had been slowed down. During the month of April, 1959, the vegetation in the lush gulf coast area was getting beyond control by use of one-shift operations, with Carrier's available weed mowing equipment. The Carrier advised the General Chairman that it planned to put on second shifts to meet its service requirements and sought mutual understanding for starting times on the second assignments, particularly on the Lafayette Division. The Carrier was unable to enter into an agreement with the General Chairman in regard to putting on second shifts. The Carrier also was unable to enter into agreements with District Chairman in regard to the second shifts. The carrier, therefore, unilaterally under date of August 6, 1959, posted Vacancy

Bulletin No. 44 and under date of August 18, 1959, Division Engineer C. R. Shaw issued Appointment Bulletin No. 44. Under date of September 24, 1959, a claim was filed by the Assistant Chairman Rhoudes of the Brotherhood of Maintenance of Way Employes.

The pertinent rule of the agreement in regard to this claim is Article XV, Rule 4. The Carrier in this instance did not obtain an agreement from the Employes' Committee, the General Chairman or the District Chairman, but unilaterally put the second shift into effect and for the reasons advanced in Award No. 1, we find that the Carrier has violated Article XV, Rule 4. Therefore, this claim will be sustained. The claimants shall be paid at the punitive rate for all hours worked after 5:00 p.m. on the dates of 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

Dated at Cleveland, Ohio, July 11, 1961.