

Award No. 4489
Docket No. 4462
2-CMStP&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The agreement was violated when Communications Supervisor J. Dickinson performed telegraph lineman's work when he put on linemen's tools and assisted the District linemen on work of cutting over a span crossing the Puyallup River in Tacoma, Washington on March 30, 1962, April 3 and April 5, 1962.
2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter recognized as the Carrier) be ordered to compensate Telegraph Crew Lineman E. L. Winters (hereinafter recognized as the claimant) eight (8) hours' pay at the rate of pay of \$2.614 per hour for each day of March 30, 1962, April 3, 1962 and April 5, 1962.
3. That Rule 72 and additional paragraphs numbered 1, 2, 3 of Rule 72 of the current Electrical Workers' Agreement, effective September 1, 1949, amply recognizes the work performed by Communications Supervisor J. Dickinson as work of a Telegraph Crew Lineman.
4. That the letter of understanding concerning Supervisors and Inspectors in the Communications Department dated April 17, 1950, also states that supervisors or inspectors will not be used to perform the duties of the linemen. (See Exhibit A).

EMPLOYEES' STATEMENT OF FACTS: Rule 72, additional paragraph 3 on page 29 of the electrical workers' agreement, definitely points out that assistance to the district linemen will be performed by crew linemen.

The letter of understanding dated April 17, 1950, definitely states that Supervisors or Inspectors will not perform the duties of a lineman.

When Communications Supervisor J. Dickinson put on linemen's tools and climbed the poles and performed work of cutting, removing wires from pins and handing them over to the district lineman on another pole, was work of telegraph lineman.

The linemen involved in this case are linemen of many years of experience in work of this nature.

The electrical workers' agreement, effective September 1, 1949, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that the claimant should have been recalled or held from the crew in order to assist the district linemen in completing the said work performed by the Communications Inspector J. Dickinson.

It is the further position of the employes that the one reason why Communication Inspector J. Dickinson put on linemen's tools and performed the work in question, was to get the work completed that weekend without being required to call back the line crewmen who were on the job assisting the district linemen earlier during that week, since it would have cost the carrier additional wages and expense of the line crewmen to keep them on this particular work and further, they had other work assigned for them to perform at some other point on the railroad.

The employes involved are employes with considerable experience in this type of work of many years standing and were in this instance capable to perform the work.

It was not necessary for the Communication Inspector J. Dickinson to put on the tools of a lineman and climb the poles and perform the linemen's work in order to show the linemen as to what he wanted accomplished. This he could have done on the ground by drawing them diagrams or sketches on paper, but he chose to climb the pole and assist them, knowing that they were shorthanded, and in this way he could save the Carrier the additional expense of another lineman and proceed to complete the work within a shorter period of time.

We, therefore, honestly believe that the claimant is entitled to the amount as claimed, and respectfully request that your Honorable Board will so find and uphold the employes' position.

CARRIER'S STATEMENT OF FACTS: On the dates of the instant claim communication Supervisor J. Dickinson was supervising District Linemen E. H. Warner and J. D. Brogdon in the cutover of communication wires from old to new facilities crossing the Puyallup River in Tacoma, Washington.

The facilities involved were "working" wires and the identification of the circuits carried by these wires was difficult and a mistake in connections would have disrupted a number of important communication facilities.

Therefore, Mr. Dickinson ascended the poles through the use of climbing gaffs and instructed the linemen in the various procedures to be followed in the correct identification of the circuits and supervised their cutover from the old to the new facilities.

In the course of instructing and supervising it was necessary, in certain instances, for Mr. Dickinson to actually perform certain work to assure proper understanding on the part of the linemen as to the correct procedure to be utilized, at which time either one or both of the linemen were immediately at hand and "looking on". We submit, therefore, that the performance of work under such circumstances falls squarely within the act of supervising or instructing and cannot be considered a violation of the electrical workers' agreement because the performance of such "work" by Mr. Dickinson was merely for instructional purposes. In this regard, we call attention to the fact that two district linemen were on duty working together in connection with this cutover of communication wires and such force was entirely adequate for the work that was to be done. Additional help was not necessary and would not have been required under any circumstances. Mr. Dickinson by his action did not at any time supplant or take the place of another lineman. As we have stated above, any alleged work performed by Mr. Dickinson was performed in the presence of the district linemen and was also for the single purpose of instructing the linemen as to the proper manner of performing the work so as to make sure there was no serious interruption to communication traffic as a result of the cutover.

POSITION OF CARRIER: The carrier submits that there is absolutely no basis for the instant claim because Mr. Dickinson's actions in the instant case were clearly in keeping with his responsibility as a supervisor, which responsibility includes, among others, the instruction of employes under his supervision. Surely it cannot be contended that a supervisor cannot instruct those under his jurisdiction as to the proper methods and procedures to be utilized in the performance of their work and that is all Mr. Dickinson did in the instant case in view of which there occurred no violation of the electrical workers' agreement or any other agreement.

Furthermore, Rule 53 of the electrical workers' agreement specifically provides for foremen performing work in the exercise of their duties as will be evidenced by a reading of Rule 53 which is quoted below for ready reference:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work." (Emphasis ours.)

The carrier submits that Mr. Dickinson did nothing more than instruct and supervise in the instant case which is an inherent right of supervisors and one which has not been contracted away, therefore, there is absolutely no basis for the instant claim and we respectfully request that it be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The resolution of this claim depends upon the determination of the factual question as to whether Communication Supervisor Dickinson violated the relevant sections of the Electrical Workers' Agreement by performing routine journeymen's work rather than confining himself to his regular duties of supervising and instructing linesmen working under his direction.

On balance, the Division finds that the Organization's evidence is more persuasive than that of the Carrier's. On the basis of the record, the Division concludes that it would be unlikely that the Supervisor would find it necessary for three days to instruct experienced linesmen how to cut over wires from old poles to new in a district where these linesmen had worked for a number of years — one for seven years. The evidence is unequivocal given by the linesmen in question stating that they were able to perform the work and that the Supervisor climbed the pole to assist them in completing the work rather than to instruct them as to how it was to be performed. There is nothing in the record to indicate that the work in question was unusually difficult or anything out of the ordinary line of duty. The linesmen in question stated that it was normal, standard work of the character which they had performed in the past.

With regard to the issue of awarding damages, this Division must take cognizance that many awards of this Division as well as that of the Third Division, some issued quite recently, have held that when work is improperly given to one not contractually entitled to it that the claimant, who would have otherwise received the work, may be awarded the pro-rata rate for the job for which he was not properly called, even though he was employed at another job during the time in controversy. The Divisions have held by a preponderance of their awards that sanctions may be imposed on the wrongdoer in order to secure compliance with the terms of a labor agreement even when the agreement does not explicitly provide for the imposition of sanctions. See: Awards No. 4322 (2nd Division) and Award No. 11701 (3rd Division).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.