



**Award No. 5921**

**Docket No. 5753**

**2-SP(T&L)-EW-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 162,  
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO  
(ELECTRICAL WORKERS)**

**SOUTHERN PACIFIC COMPANY (TEXAS AND  
LOUISIANA LINES)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Southern Pacific Company violated the terms of the current agreement when it posted a position for electrician without specifying the duties to be performed.
2. That accordingly, the Southern Pacific Company be ordered to revert to its former practice of specifying the duties of position on job bulletins as was done prior to October 4, 1967.

**EMPLOYEES' STATEMENT OF FACTS:** On October 4, 1967, the Southern Pacific Company, hereinafter referred to as the carrier, posted Bulletin #40-1967 at its San Antonio diesel shop and car shop for position #11 for one electrician. This position was a seven (7) day assignment, hours of assignment 12 Midnight to 8 A.M., Monday thru Friday, rest days Saturday and Sunday, but said bulletin did not specify the duties of the job.

On October 5, 1967, Local Chairman H. Alsbury protested the impropriety of this bulletin to Master Mechanic P. L. Scott in that it did not specify the duties of the position. He was advised, by Master Mechanic Scott that no more positions would be advertised specifying the duties of such. All positions advertised since on or about 1952 up to the date of this dispute have shown the duties to be performed.

This dispute has been handled up to and including the highest officer of the carrier designated to handle such matters and all have declined to make a satisfactory settlement.

The agreement effective September 1, 1949, is controlling.

**POSITION OF EMPLOYEES:** It is submitted that the pertinent part of rule 15 of the controlling agreement reading:

**"When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown**

by trial, be given preference in filling such new jobs or new vacancies that may be desirable to them."

provides that all new positions or vacancies be bulletined specifying the duties of the position to enable an employee, coming within the terms of the agreement, to exercise his seniority on a position desirable to him. The practice of specifying the duties of a position on the bulletin has been followed by the carrier since on or about 1952, and has therefore, been an agreed to interpretation between the carrier and the organization. The carrier has no right to change this practice without reaching an agreement with the organization to do so.

It is evident that when a position is bulletined without describing the duties of such, the employees have no way of knowing whether a position is desirable, thus affecting their rights by virtue of their seniority. In the handling of this dispute, the file does not indicate the carrier denied that it has been the practice in the past to specify the duties of positions in the bulletins.

The foregoing abundantly supports the employes' statement of claim, and we respectfully request the Honorable Members of this division to so rule by sustaining this claim.

**CARRIER'S STATEMENT OF FACTS:** The instant dispute has arisen between the Southern Pacific Company, Texas and Louisiana Lines, hereinafter referred to as carrier, and the International Brotherhood of Electrical Workers, System Federation No. 162, R.E.D., AFofL-CIO, hereinafter referred to as organization, over the language used by the master mechanic at diesel shop, San Antonio, Texas, in bulletin no. 40-1967, position no. 11, posted for seniority choice of electricians, October 4, 1967. This bulletin notice reads as follows:

"POST: Diesel Shop  
Car Shop

C.S. 7035

**NOTICE OF VACANCY OR NEW JOB**

Bulletin No. 40—1967

Place—San Antonio, Texas  
Date—10-4 1967

The following is open for bid

Job One (1) Electrician	Location—Diesel Shop
Position No. 11—7 day	
Assignment	Posted: 10-4-1967
Assigned Hours—	
Monday	12:00MN to 8:00AM
Tuesday	12:00MN to 8:00AM
Wednesday	12:00MN to 8:00AM
Thursday	12:00MN to 8:00AM
Friday	12:00MN to 8:00AM
Saturday	Rest Day
Sunday	Rest Day

Remarks—Bids on the above position will be received in this office until 12 Noon October 9, 1967.

(Signed) P. L. Scott  
Title—Master Mechanic

New Job  
Date Posted 10-4-1967  
Date Expires 10-9-1967

cc: H. Alsbury, Local Chairman IBofEW"

It will be noted that the bulletin is reproduced on Form CS-7035, which is used system wide on this property for the advertisement of all shop craft jobs. The job is described as "One (1) Electrician, Position #11—7 day assignment" and shows location, date posted, assigned hours, rest days, time limit for bidding on the position, and whether it is a new job or whether it had been vacated by certain other electrician. The employees complain that the description "One (1) Electrician" is not sufficient description of the job assignment, whereas, the carrier contends that the description conforms with the classification of work rule of electricians, the bulletin rule, and conforms with the past practice used in electrical bulletins systemwide except at San Antonio, Texas.

As a result of a complaint from the master mechanic at San Antonio about excessive idle time of electricians at the diesel service shop because employees contended they were only required to do work assignments described in the bulletin advertising their positions, and bickering among employees as to who would be entitled to overtime, the carrier's manager of personnel was made aware of the fact that electrician vacancies had been bulletined for several years with an inclusive statement showing part of the duties assigned. For example, notices of vacancies or new jobs contained in some instances statements reading:

"One (1) Electrician (Inc. Electric Cabinets and Steam Generators)" and other notices have read:

"One (1) Electrician (Inc. Traction Motors, Air Conditioning and other electricians' work at Passenger Station #6)" also:

"One (1) Electrician (Inc. Traction Motors)"

A tendency had grown among the electricians to do only the work described in the "inclusive" portion of the bulletin and when instructed to do other electrical work, they argued that other phases of electrician's work was not included in their assignment. The manager of personnel immediately instructed the San Antonio division master mechanic to discontinue such inclusive description because it was contrary to the systemwide practice and was not required by the terms of the agreement between these parties. These instructions resulted in the issuance of bulletin no. 40—1967 dated October 4, 1967, which is the basis of complaint in the instant case.

Copies of the agreement between these parties effective April 15, 1967, are on file with the Second Division, NRAB, and by this reference are made a part of this dispute.

**POSITION OF CARRIER:** The employees contend that the carrier violated the terms of the current agreement when it posted a position for an electrician without specifying the duties to be performed and asks that the carrier revert to the practice in effect prior to October 4, 1967, at San Antonio, Texas. Thus they alleged a violation of agreement, evidently relying upon the basic agreement and a prior practice in effect at San Antonio only to sustain their contention that this carrier adopt, systemwide, a bulletin practice which would require separation of the various operations comprising electricians work within that classification at the various locations on the property, and that individual electricians employed at such points may choose a particular operation within the craft and acquire individual rights to that operation, excluding all others.

There is no justification for such a contention whatever in the agreement rules, and the mere fact that a practice contrary to that in effect systemwide

has arisen at an isolated location is no justification that it be continued if it is not bottomed on agreement support. The carrier's position will be based on the following principal points:

I. The Agreement between these parties does not require the enumeration of specific duties to be performed by an electrician in posting a job vacancy or new position.

II. The employees will not be able to prove that the practice referred to herein at San Antonio Diesel Shop is systemwide, therefore, they cannot give such practice the force and effect of an agreement. The overwhelming weight of authority requires proof of systemwide custom, practice and tradition in order to establish a right founded on such concept.

The local chairman intimates that the practice at San Antonio of breaking down into component parts, electricians jobs within the electricians' classification, was agreed to by former San Antonio Division Master Mechanic P. L. Leonard and the local federation of the electricians' craft. That allegation is incorrect because there is no agreement to such effect in existence at San Antonio. On the other hand, it is admitted that the practice of including certain phases of electrician work on bulletins was begun during the tenure of Master Mechanic Leonard. It was not intended to confer on the successful bidder to such vacancy an exclusive right to perform the phase of electrician work described, however, it resulted in a chaotic condition which caused inefficiency and uneconomical practices which will be gradually eliminated when jobs become vacant and are rebulletined properly.

#### I.

The Agreement between these parties does not require the enumeration of specific duties to be performed by an electrician in posting a job vacancy or new position.

The rules of the effective agreement between these parties pertinent to this dispute are quoted below:

#### "RULE 28 Seniority

Seniority of employees of each class in a craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided below and in special rules of each craft:

Maintenance of Way (Bridge and Building where separate from Maintenance of Way),

Maintenance of Equipment,

Maintenance of Telegraph,

Four sub-divisions of Carmen as follows:

Pattern Makers,

Upholsterers,

Painters,

Other Carmen.

Seniority lists will be open to inspection; posted on bulletin board and copy to be furnished local committee and the General Chairman. Seniority lists will be revised in January of each year. The seniority date not protested within sixty (60) days from its first posting on a roster will be considered permanently established. Typographical errors on subsequent rosters may be corrected any time."

The employees involved in this dispute are electricians employed at the point of San Antonio in the maintenance of equipment department. The bulletin rule provides in effect that new jobs or vacancies will be advertised to employees at the "point" involved because their seniority is restricted to that particular "point".

**"RULE 15**  
**Bulletining Vacancies**

When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created, including differential jobs as helpers, will be bulletined.

Bulletins must be posted five days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the officer in charge and a copy of the application will be given to the local chairman. Assignment will be made and the successful applicant assigned within seven (7) days following expiration of bulletin.

An employee exercising his seniority rights under this rule will do so without expense to the carrier; he will lose his right to the job he left, and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft.

**Temporary Vacancies**

Vacancies known to be of thirty (30) days or more duration will be placed under bulletin as temporary vacancies and assignments made in the manner provided in this rule. An employee who is temporarily absent and whose position has been bulletined under the provisions of this rule, shall return to his position on reporting for duty and the employee who worked the temporary vacancy in the exercise of his seniority during absence of the regular occupant of the position, shall return to the position he left. The same procedure shall be followed by other employees similarly affected.

**Displacements**

When a position is abolished, or an employee is displaced through no fault of his own, he shall, upon written application to the officer in charge, with copy of the application to the local committee, be permitted to displace any junior employee on the same seniority list. All displacements made under this rule shall be without expense to the Company."

The classification of work rule, or the so-called scope rule of electricians, reads as follows:

**"Rule 108**  
**Electricians**  
**Classification of Work**

(a) Electricians' work shall consist of maintaining, repairing, re-building, inspecting and installing the electric wiring of all generators, switch boards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment; inside telegraph and telephone equipment, electric clocks, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric

tractors, and trucks. Cables, cable splicers, high tension powerhouse and sub-station operators, high tension linemen, powerhouse attendants operating and maintaining electric generating powerhouse equipment; electric crane operators for cranes of 40 tons capacity or over; and all other work generally recognized as electricians' work.

Rule 139 lists the various class and craft of mechanics and their rates of pay. Included in such listing is the title "electrician."

There is no need for specialists in the craft at a point such as San Antonio diesel service shop. For example, of the thirteen electricians employed at that point on the day shift, one job has been bulletined as an inspector and carries a different rate, another has been bulletined to work in the car department, which is about a mile removed from the diesel shop, another has been assigned to the "search" equipment building which is about three-quarters of a block from the diesel service shop; on nearly every day one man is assigned to work in the back shop area, and one is assigned to bench work. Because of absences due to vacations, illness and personal reasons, we average about one absentee per day in the electrician ranks. This leaves a work force of seven or eight electricians for ordinary diesel repair and maintenance work who are demanding that various phases of such work be assigned to them by bulletin. For example, they are in effect contending that a fence should be built around a position which includes in the bulletin the phrase "traction motor" and only the man assigned by bulletin to do "traction motor" work be allowed to do that work only, notwithstanding there could be on occasions very little traction motor work to be done. Also, they contend that a job should be bulletined "cabinet work and steam generators", and only the man assigned to such bulletin should be privileged to do such work and no other electrician should infringe on work which he would have the exclusive right to perform by virtue of the bulletin. The employees have extended this contention to such extremes that they are contending that the carrier could not assign such described electrician work to available electricians on duty, but must call men with the same restrictive duty description on their bulletin to perform work of such nature on an overtime basis of pay when vacancies occur because of absenteeism. This is an intolerable situation, especially in view of the small work force involved at San Antonio and the fact that other electricians are available to do the work at a pro rata rate. It results in a dissipation of available electrician manpower.

Bulletin rule 15 quoted above does not contain express language which would require the carrier to specify the particular or normal duties of an advertised position, see Second Division award 3888. We notice the labor members dissent in that Award which referred to award 1440 on this property covering a carman case. In that particular case, two recognized, different classifications within the carman craft were involved, i.e., freight carman and car inspector. The latter position requires qualifications over and above those of a freight carman. The rule involved in that dispute provided that carmen, assigned as inspectors, must be over 21 years of age, read and write, and have a thorough knowledge of A.A.R. Rules, and Safety Appliance Law and Regulations of the Bureau of Explosives. There were two distinct different positions with different qualifications which no doubt lead to some of the language of Referee Frank M. Swacker. That award has absolutely no application to the instant dispute.

All of the electrical work involved in diesel repairs and maintenance fall within the classification of work rule and it would be extremely foolish to attempt to make jobs grouping with descriptions from all of duties outlined

in that rule. Again we point out the fact that there are not many electrician jobs in the diesel service shop at San Antonio, and specialization would result in an inefficient and uneconomical operation. We repeat the language of Referee Adolph E. Wenke in Award 2148 wherein the employee contended job descriptions should be used. The findings in that award said in part:

**"In the absence of any rule relating thereto the Company may assign this work in any manner it desires in order to have it most efficiently performed."**

The employees are attempting to secure by an award from your division a new rule which is beyond the board's authority. Existing agreements do not require the carrier to do what the employees are demanding in the instant dispute.

## II.

**The employees will not be able to prove that the practice referred to herein at San Antonio Diesel shop is systemwide, therefore, they cannot give such practice the force and effect of an agreement. The overwhelming weight of authority requires proof of systemwide custom, practice and tradition in order to establish a right founded on such concept.**

The employees have given a connotation to the language of the bulletins that were issued at San Antonio prior to October 4, 1967, that was not intended and cannot be logically interpreted to mean what they contend. It was their position that an electrician who was the successful applicant for a job bulletined to read in part "Job (1) Electrician (Including Traction Motors)", had the prior right to traction motor work and if other electricians, because of the exigencies of the service at a particular time, did traction motor work while the successful bidder was doing other electrical work, he was properly aggrieved because he was being deprived of work belonging to him exclusively. It was the carrier's understanding that the bulletin called for an electrician who could be called upon to do any electrical work of his classification including traction motor work. The language cannot be construed as giving an employee the exclusive right to perform traction motor work. In any event, in order to eliminate the controversy the carrier reverted to the systemwide bulletin practice which had been used for many years in bulletining mechanics' jobs.

Electrician mechanics are employed in the maintenance of equipment department at Houston, San Antonio, Beaumont, Lafayette, Louisiana, and Avondale, Louisiana. They formerly were employed at Ennis, Hearne and Victoria, Texas, however, in recent years, electrician positions at these latter three points were abolished.

Houston is the largest maintenance of equipment point on this carrier's system. Electricians are employed at the diesel service shop, back shop and train yard. With the exception of our "Search" equipment which electronically detects malfunctions in diesels, all of the electricians jobs were bulletined to show; bulletin number, occupation (electrician), location, assigned hours, name of employe vacating the job or new job, and the assigned rest days. Because the search building is isolated from other areas, the three jobs bulletined both at Houston and San Antonio refer to the fact that the successful applicant would be primarily assigned to "search" work.

There were bulletins issued at Houston, Texas, in the past which clearly reflects the systemwide practice of bulletining electrician positions on this

property. It will be noted that each notice of vacancy or new job include other job classifications such as carmen, sheet metal workers, machinists and other job classifications which are covered by the identical same bulletin rule of the shop craft agreement herein dispute, and they are listed in the same manner that electricians' vacancies are listed, yet we have no complaint from the other crafts as to this practice. For the convenience of the board, we have circled in ink electrician vacancies advertised. Included are bulletins issued February 18, 1963, September 30, 1963, November 2, and 3, 1964, March 29, 1965, August 15, 1966, August 22, 1966, September 12, 1966, June 20, 1967, May 13, 1968, June 16, 1968, June 17, 1968, July 1, 1968, and December 2, 1968. We call the board's particular attention to the fact that each local chairman of the involved organization were furnished copies of the bulletins.

Attached are copies of notice of vacancy or new jobs issued at Lafayette, Louisiana. They are placed on form L-7035, the same as those used by San Antonio. These bulletins were issued May 4, 1964, June 28, 1968, and July 1, 1968. The latter two electrician jobs were new jobs, whereas, the first bulletin covered a job vacated by J. P. Logan. Copies of these bulletins were forwarded to the Local Chairman of I.B.E.W.

Bulletin #19 was issued August 1, 1968, and merely specified that an "Electricians" job was open for bid. Also, bulletin #18, July 29, describes the job as an "Electrician" vacancy.

It will be observed that all of the bulletins covered show that the jobs being advertised were electrician jobs without including further job descriptions. This form of bulletin is in accordance with a systemwide past practice or custom of approximately fifty years. This form of notice was used at Victoria, Ennis and Hearne where those points had electrician positions prior to their discontinuance. We were unable to locate bulletins covering the electricians positions at Beaumont because they were evidently destroyed in accordance with the carrier's usual policy of destroying aged documents of no further use. However, we are informed by the superintendent that bulletins issued at that location did not contain descriptions of different phases of work of the electricians' scope rule.

Thus we have a situation in existence where the employees contend that inasmuch as you had a practice of including certain descriptions of electrician work on job bulletins at San Antonio, you should be required to include such descriptions on all electrician bulletins, not only at San Antonio, but at all locations on the property. In order for practice to carry the force of contract by acquiescence, the practice must be systemwide, or systemwide substantially. The vast majority of the decisions covering this principle were issued by the Third Division, NRAB. Third Division Award 16550 adhered to this principle and stated in part at the findings:

"When the Agreement is systemwide, the Organization when challenged, has the burden of proving that the work involved has been performed, historically and customarily, systemwide by employes covered by the Agreement. Proof that it has been performed accordingly at an isolated site does not satisfy the principle. See, for example, Awards Nos. 12360, 12462, 13914, 13605, 13580, 13400, 13284, 13280, 13195, 12356, 12897, 12787, 12381, 12109, 11605, and 12415."

In the instant case Petitioner failed to adduce evidence that the work involved had been performed systemwide exclusively, historically and customarily, by employees covered by the Agreement. We, therefore, by adherence to the principles enunciated, *supra*, dismiss the claim for lack of proof."



Of the same result in Second Division award 5525 wherein it was stated in part:

"The record indicates that 'exclusivity' has been shown regarding the work in question at this location, namely North Little Rock, Arkansas. However, no proof was presented by petitioners indicating a systemwide showing of 'exclusivity'".

**CONCLUSION:** A review of the bulletin and classification of work rules in the schedule agreement between these parties reveals that this carrier is not required by agreement to place additional descriptions on electrician job bulletins because after all the job being advertised is for an electrician. The bulletins are merely saying that this carrier has an electrician's job for a man qualified under the electrician classification of work rule. There is just not enough electrician's work on a diesel to break it down into parts where one electrician would not be infringing upon the work of another. The pie is just too small to be susceptible to division.

Without agreement support the claim must fall because the improper practice at San Antonio of including job components in a bulletin is not systemwide and is contrary to a systemwide practice of about fifty years.

**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.

Beginning in October, 1967 Carrier changed its bulletining procedure at its San Antonio Diesel shop and Car Shop by eliminating specification of duties to be performed by electricians. This was consistent with a systemwide practice of not specifying duties.

The practice of specifying duties at San Antonio was instituted in 1952 by a former Master Mechanic.

The Organization contends that Rule 15 of the Agreement between the parties requires duty specification, and further, that a past practice cannot be changed without agreement.

**Rule 15 provides:**

"When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them."

There is no language under the rule which requires that duties be specified. The Classification of Work rule of the Agreement lists all of the work assignable to electricians, and any of it may be assigned to electricians.

With respect to the second contention of the Organization, the Board finds that there is no showing that the practice was historically and customarily instituted on a system wide basis. The overwhelming majority of awards of this Board hold that in the absence of a specific rule, the past practice must be shown to be systemwide.

**A W A R D**

**Claim is denied.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

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

**Dated at Chicago, Illinois, this 30th day of April, 1970.**