

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 3, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
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(Kansas City Terminal Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Terminal Railway Company violated Rules 19, 20, 21 and 67 of the July 1, 1936 controlling agreement; Article III of the September 25, 1964 Agreement when Assistant General Foreman Edwards assigned himself to perform electricians' work on April 23, 1975, thus, depriving Electrician C. W. Connor of his contractual rights to said work at Kansas City, Missouri.
2. That accordingly, Carrier be ordered to compensate Electrician C. W. Connor eight hours (8') at the time and one-half rate for April 23, 1975.
3. In addition to the money amounts claimed, herein, Carrier be ordered to pay interest on the principal amount claimed, computed at the rate of 6% per annum and compounded annually from the anniversary date of this claim.

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.

Claim involves work performed on installation of office heating and air conditioning controls, including thermostat and transformer. There is no dispute that Claimant, an Electrician, performed such work on April 22, 24, and 25, 1975, and that on April 23, 1975, a portion of the work was performed by an Assistant General Foreman, not of Electrician seniority, at a time when Claimant was assigned to work elsewhere.

The Board finds no question involved that the work was properly that of the Electrician craft, with no entitlement for it to be performed by a foreman. Article III - Assignment of Work - Use of Supervisors provides in part:

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

Since mechanics are employed at the point in question, the prohibition against foremen performing craft work is clear. Whether or not the Claimant's work was faulty on April 22, or the Assistant General Foreman's work on April 23 was faulty, are not relevant issues.

The Board finds that the work was improperly assigned, and the Electrician's claim for the work is justified under the applicable rules. The question is one of remedy. The fact that the Claimant was under pay and at work at another location at the time the Foreman performed the work on the heating and air conditioning controls is not sufficient to defeat a claim for pay.

The work should have been assigned to an Electrician -- at a time to be determined by the Carrier -- and was work denied to a craft employee. To say that the claimant is not entitled to pay because, at a given moment, he was under pay elsewhere would obviously give the Carrier a latitude of work assignment not sanctioned by the rules.

The claim for pay at the punitive rate, however, is not warranted. This Board cannot determine when the work would have been done, if performed by an Electrician rather than the Assistant General Foreman. Likewise, the claim for interest is not granted, based on the reasoning expressed in a long series of awards on this issue by the Board.

Finally, there is the issue of the amount of time involved. The Board will not dismiss this as a de minimis matter. Not only is the amount of time involved in dispute between the parties, but also involved would be the time for the Electrician to come to and depart from the site of the work from another work location.

The Board will deny the claim for eight hours' pay at the punitive rate, but will award such pay on the pro rata basis to be determined on the property by the Organization and the Carrier as if the Claimant had been assigned to perform the work done by the Assistant General Foreman.

The Organization argues that the claim should be granted in full based on the consideration that the Carrier failed to deny the claim in proper fashion at one point in the appeal procedure. The Board finds the Carrier's reply of February 10, 1976, of sufficient clarity that a denial is clearly implied, even if not specifically stated as such.

A W A R D

Claim No. 1 is sustained.

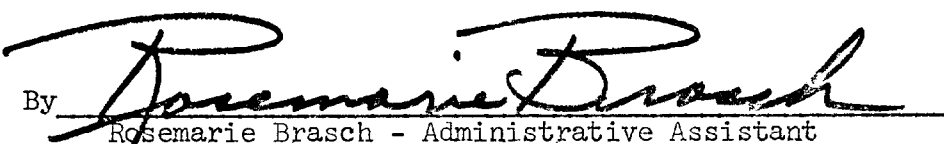
Claim No. 2 is sustained in part to the extent indicated in the Findings.

Claim No. 3 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.