

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the controlling agreement of System Federation No. 54 effective November 1, 1923 on December 9, 1977 when the Assistant C & S Supervisor forcibly broke into the Big 4 Yard Radio Shop obtaining and subsequently exchanging the batteries in the Puller Radios.
2. That Radio Maintainer G. R. Jackson be compensated in the amount of 2.8 hours at the overtime rate by reason Assistant C & S Supervisor performed Electricians work on December 9, 1977.

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.

Claimant, a first trick Radio Maintainer at Avon, Indiana, requests 2.8 hours of pay at the overtime rate because a carrier supervisor allegedly performed work exclusively reserved to the electrical craft. During the third shift on December 9, 1977, the carrier's Assistant Supervisor broke into the Radio Shop and obtained batteries for the portable radios used by the Puller crews. The third trick radio maintainer was absent and so no radio maintainer was on duty when the supervisor procured the batteries. After obtaining the batteries, the supervisor distributed them to the Puller crews who presumably placed the batteries in the portable radios. The claimant asserts that he should have been called prior to his shift because the supervisor was performing work normally performed by the electrical workers.

Specifically, the organization contends the supervisor's acts violated Rule 29(a) of the applicable agreement, Section 506 of Public Law 93-236 (Regional Rail Reorganization Act of 1973) and company policy. The carrier raises five arguments. First, the organization, which has the burden of proof, has not shown any of the work performed by the supervisor is within the scope of Rule 29(a). Even if the supervisor did perform mechanics' work the carrier argues that a severe winter storm created an emergency. The puller crews needed working portable radios to

properly perform their work in the snow storm. Second, according to the carrier, this Board lacks jurisdiction to resolve disputes under the Regional Rail Reorganization Act of 1973 since all such disputes must be processed through a Special Board of Adjustment under Section 507 of the Act. Third, carrier policy is also not within the enforcement power of this Board. Fourth, the organization failed to cite any rule on the property or in its submission to this Board to support the request for 2.8 hours of overtime pay. And fifth, the work performed by the supervisor was so insubstantial to be, at most, a de minimis violation of the applicable agreement.

This Board is empowered to resolve disputes within the purview of Section 3 of the Railway Labor Act. We lack the jurisdiction to decide if the carrier violated Section 506 of the Rail Reorganization Act of 1973. Second Division Award No. 8073 (Roukis). Similarly, a determining a breach of company policy is outside the scope of our jurisdiction unless the policy is incorporated into an express or implied agreement between the organization and the carrier. Because the organization has not cited any such agreement in the record, we cannot consider the alleged violation of company policy.

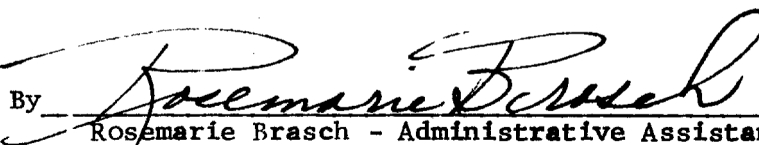
In this case we need not consider whether or not the work performed by the supervisor on December 9, 1977 was exclusively reserved to the electrical craft because any intrusion into the work exclusivity was so insignificant to constitute, at most, a de minimis violation. The supervisor's procurement of batteries took little time and the work was inconsequential so that if there was a violation of Rule 29(a), it was insignificant. Second Division Award No. 7983 (Cushman); Second Division Award No. 7587 (Eischen). Thus, we must deny the claim.

A W A R D

Claim 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 28th day of October, 1981.