

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 (ConRail) violated Rule 2-A-4(b) of the May 1, 1979 Agreement when Electrician's A. Biacofsky and F. Boutton were unjustly compensated when they were moved from their bulletined position's and were assigned to perform work not comprehended in their regular assignment.
2. That accordingly, the Consolidated Rail Corporation (ConRail) be ordered to compensate Electrician's A. Biacofsky and F. Boutton an additional three (3) hours pay for May 9, 1979 in compliance with Rule 2-A-4(b) of the Agreement.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants are assigned to a regular position identified as "Search", according to the bulletin on which they bid. For seven hours on May 9, 1979, the Claimants were assigned, as described by the Carrier, "to test run Unit 6085 and also work Unit 6691 to determine cause of constant wheel slip" at the "Refuel Pad".

The Organization offered evidence of bulletined positions located at the "Fuel Pad" involving, for example, "Trouble shoot, repair or renew electrical equipment on locomotives in shop with electrical trouble".

The Claimants argue they should have received an additional three hours' pay for work at the "Pad" under the terms of Rule 2-A-4(b), which reads as follows:

"An employee, except in the application of paragraph (a) of this rule, who, in other than emergency such as flood, snowstorm, wreck, fire, etc., or to keep him fully occupied, is assigned to perform work not comprehended in his regular assignment for a period of more than thirty (30) minutes shall be allowed additional straight time pay equal to the time so assigned with a maximum of three (3) hours' pay."

The Carrier argues that the payment is inapplicable because work at the "Pad" for those assigned to "Search" is work "comprehended in (the Claimant's) regular assignment".

Rule 2-A-4(b) is part of the May 1, 1979 Agreement. The Carrier argues that Electricians assigned to "Search" as a matter of practice prior to May 1, 1979 performed the work referred to in this dispute. Thus, argues the Carrier, the work is "comprehended" in the assignment.

The difficulty with the Carrier's position is that Rule 2-A-4(b) provides for a three-hour payment which was not called for prior to the effectiveness of the Agreement. The parties adopt new rules for the purpose of changing that which prevailed theretofore.

Thus, it is not enough to show that "Search" employees occasionally worked at the "Pad" in the past. Absent a rule to so provide, they could not receive a three-hour premium payment for such work.

The Organization has shown separate bulletin positions for "Search" and those located at the "Pad". On the face of such evidence, it can be logically argued that one position is not "comprehended" in the other. If the Carrier wishes to make an affirmative defense that the "Search" position regularly "comprehends" work at the Pad, it is not enough simply to say it has happened before without premium payment, since -- according to the Carrier -- the previous Agreement at the location did not include the provision for premium payment.

The Board was offered no showing of proof that the "Search" position is not something different from those positions located at the "Pad". The Carrier has presented no convincing argument as to the meaning of the word "regularly". In view of this, the Board must conclude that the newly adopted Rule 2-A-4(b) is applicable.

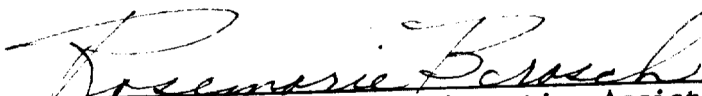
To adopt the Carrier's argument would be to say that an employee must perform work he has never been assigned to before in order to receive payment under Rule 2-A-4(b). The Board does not find the language of the rule as restrictive as this.

A W A R D

Claim sustained.

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 13th day of January, 1982.