

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 under the current agreement Electrician A. W. Paulson was improperly compensated on January 16, 1979, when the Consolidated Rail Corporation (ConRail) moved him from his regular assigned position to a different location which is in violation of Rule 2-A-1(e) and Memorandum of Understanding dated February 10, 1965.
2. That accordingly, the Consolidated Rail Corporation (ConRail) be ordered to compensate Electrician A. W. Paulson an additional three (3) hours pay for January 16, 1979 as required by 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 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 is a second trick Electrician on the support force stationed at the Carrier's Conway Engine House. During his shift on January 16, 1979, the Carrier assigned Claimant to test a diesel unit at the load box. It is undisputed that it took Claimant at least four hours to test the unit. Claimant seeks three hours of pay for performing work at the load box and cites Rule 2-A-1(e) of the 1952 Agreement to support his claim.

The last paragraph of Rule 2-A-1(e) states:

"Except as provided in Transport Workers Regulation 2-A-4 (Rule 2-A-5 for System Federation), an employe moved from one position to another on the same shift, at the instance of Management, will receive an additional three (3) hours' pay at the straight time rate of the regular assignment he holds for each day he is required to work on another position."

According to a February 10, 1965 Memorandum of Understanding which interprets the final paragraph of Rule 2-A-1(e), an employe must fall within one of four

conditions to be entitled to the three hour payment. In this case, the Organization submits that the Carrier's insistence that Claimant perform the diesel unit test at the load box satisfied the fourth condition which follows:

"(4) If he is assigned to perform work whether ordinarily included in his regular assignment or not, at a location other than that of his regular assignment for a period of four (4) hours or more.

NOTE: The term 'location of his regular assignment' as used in paragraphs (3) and (4) above shall be understood to mean the location in his seniority district at which the employee performs the duties ordinarily included in his regular assignment."

The issue is whether the load box is a location other than the location where Claimant performs his duties on the support force. The Organization argues that the locations are different because: 1) the load box is outside the Engine House while the support force is stationed inside; 2) the load box is a separate position as shown by past advertisements for a first shift load box electrician, and; 3) a Carrier supervisor at Conway has made the three hour payment when identical circumstances occurred in the past (at least prior to the abolition of the first shift load box electrician position). The Carrier contends the Claimant's regular assignment and the load box are at the same location because: 1) the load box and the support force are both stationed on Track No. 26 at Conway; 2) the bulletins advertising the position of load box electrician state the assigned employee would work on the support force when not performing his load box duties, and; 3) the Carrier is not bound by any past practice of paying electricians in similar situations especially since the payments were made by a subordinate official and the payments were immediately discontinued when higher authority discovered the practice.

In deciding whether the load box is at a location different from Claimant's regularly assigned support force location, we must consider all the surrounding circumstances. The Note following the fourth condition in the agreed upon interpretation of Rule 2-A-1(e) defines "location of his regular assignment" in relatively broad terms. Thus, the Organization, which shoulders the burden of proof, must demonstrate the load box is a separate place from the location where Claimant works on the support force. Second Division Award No. 8711 (Marx). We conclude the Organization has not met its burden of proof. The load box is in such close proximity to Claimant's regular assignment that the locations are substantially the same. The load box is on the same track as the support force and when an advertisement was posted for load box electrician, it specifically stated the electrician would also work on the support force.

This Board also has consistently ruled that the Carrier is not bound by the unauthorized and erroneous past payments made by a subordinate official especially when, upon discovery of the practice, a higher authority promptly terminated the practice. Second Division Awards No. 8329 (Dennis) and No. 8726 (Twomey). Therefore, we must deny the claim.

Form 1
Page 3

Award No. 9049
Docket No. 9159
2-CR-EW-'82

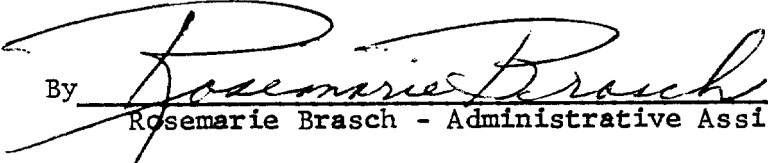
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.