

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the current agreement, particularly Rules 104, 105, 106 and 142 when on April 20, 1979 other than an Electrician was assigned to operate the Panel Rail assembling shop electric overhead crane. The St. Louis-San Francisco Railway Company continues to violate the agreement.
2. That accordingly the St. Louis-San Francisco Railway Company compensate Electrician Crane Operators J. H. Mercer, J. F. Downs and K. E. Williams of the Roadway Shops.
3. Claim for eight (8) hours pay for April 20, 1979 and for eight (8) hours for each day the crane is operated by other than an electrician to be divided equally between J. H. Mercer, J. F. Downs and K. E. Williams.

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.

Claimants allege that the Carrier had violated the current agreement by not using electricians to operate the electric overhead crane in the panel rail assembling shop.

The Organization cites the provisions of the agreement which support the contention that this work is to be performed by electricians. The Organization relies upon numerous Board awards and, in particular, Second Division Award No. 3543 which was a dispute between the same parties wherein this Board sustained the Organization and ordered the carrier to restore the operation of the diesel shop crane to the electrical workers' craftsman. The Carrier has pointed out, however, that in spite of the decision in Award 3543 the work in question in the instant matter is not within the scope of the agreement and, therefore, the award is of no precedent value.

The issue raised is that the scope of the agreement does not include the panel rail assembling shop. The scope of the agreement between the parties covers "roadway shops" among the other facilities (not material here). The carrier alleges that the panel rail assembling shop is not a roadway shop and is, therefore, not covered by the agreement between the parties.

The Organization cites the numerous cranes which were discontinued and, in effect, alleges that this one is covered by that part of the agreement which states that the provision of Rule 106 which refers to electric crane operators provides when considering crane operators of less than thirty ton capacity, that the provision does in fact refer to "cranes on which operators are now assigned and cranes of this type which may be installed in the future".

The Carrier emphasizes that any language such as this which may seem to broaden the scope of the agreement must be read in the context of the scope of the agreement and can, therefore, only cover those installations that are covered by agreements between the parties. We support this contention. If the panel rail assembling shop is not considered a roadway shop then it is not subject to the terms and conditions of the agreement between the parties.

The Organization alleged that the work has been performed by electricians; however, it should be noted that in the letter from the General Chairman of the Brotherhood of Maintenance of Way Employes, it is his claim that this crane operating work should be performed by Maintenance of Way employes indicating that they do this as a matter of course. The Carrier has also alleged that there are many instances on the system where the operation of such cranes is being done on a continuing basis by other than electricians.

This Board must decide whether the scope of the agreement between the parties extends to the work involved and, in particular, whether the panel rail assembling shop is a roadway shop. There is not sufficient information in the record to clearly establish the nature of this plant. We have concluded that the Carrier has raised sufficient question by its allegations coupled with the claim being made by the Maintenance of Way organization to have sufficiently raised an affirmative defense. We do not believe on the record, however, that the Organization has overcome this defense with probative assertions and/or evidence for us to determine that it has satisfied its duty to establish that the panel rail facility is within the jurisdiction of the agreement, and we will dismiss the claim for failure to provide sufficient probative and convincing evidence to overcome the defense raised by the Carrier, namely that the panel rail assembling shop is not classed as a roadway shop.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.