

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement effective September 1, 1949, in particular Rules 53 and 71 on March 4, 1982, when it improperly assigned Supervisor N. Bihun to perform electrical work.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Electrician Lawrence R. Lovely for three (3) hours and thirty-five (35) minutes at time and one half at the current rate of pay.

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 employes 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.

On March 4, 1982, Engine #48 of suburban passenger Train #2233, which was reported to have "wheel slip trouble", was repaired by Electricians at Carrier's Western Avenue Diesel House in Chicago, Illinois. Subsequent to said repair work, on that same date, Carrier's first shift diesel house foreman, N. Bihun, was assigned to ride in the locomotive to observe the wheel slip indicator light. The record indicates that the ride lasted three hours and thirty-five minutes (from 4:00 PM to 7:35 PM); and, as best as can be determined, the run itself was a normal run. Foreman Bihun's account of his activities while on board are as follows:

"On March 3, 1982 I rode in the cab of Unit 48 because it had a report of wheel slip trouble. The Unit was repaired at the Western Avenue Diesel House. I rode in the cab just to see if wheel slip would occur. I did not perform any test nor did any electrical work on Unit 48. Whatever was done by the electricians corrected the problem".
(Carrier's Ex. H)

On April 20, 1982, a claim was filed on behalf of L. R. Lovely, an Electrician at the Western Avenue Diesel House who was regularly assigned on the 8:00 AM to 4:00 PM shift, which contended that Foreman Bihun, a Supervisor, was improperly assigned to perform electrical work in connection with the March 4, 1982 ride involving Engine #48. According to Organization, Claimant was available for work and was next in line for overtime service on said date; and, therefore, should have been given the assignment. Organization further maintains that the work which was performed by Foreman Bihun was work which was normally performed by employees of the Electricians' Craft; that such work is specifically encompassed by Rule #71 which entails "...maintaining, repairing...inspecting...electric locomotives...; and that Foreman Bihun's performance of said work was a violation of Rule #53 which generally prohibits Supervisors from performing unit work.

Carrier argues that the instant claim is procedurally defective in that "...Supervisor Bihun did not ride locomotive #48 on March 4, 1982...but rode the locomotive on March 3, 1982". Carrier contends, therefore, that "...the claim as presented contains a fatal defect...(and the)...Board is without jurisdiction in the instant case, and thus the claim should be declined in its entirety" (see: Second Division Awards 6998 and 8161).

Regarding the merits portion of this case, Carrier simply maintains that Foreman Bihun at no time performed any tests or electrical work on locomotive #48 on March 3, 1982; he merely observed the operation of the wheel slip indicator light. According to Carrier, since Organization has failed to prove that Foreman Bihun performed any Electricians' work, and in fact he did not perform any such work, then there was no violation of Rule #53 (see: Third Division Awards 9266 and 15539).

After carefully reading and studying the complete record in this dispute the Board is convinced that Organization's claim must be sustained in its entirety.

Carrier's procedural contention must be dismissed for the following reasons: (1) Carrier's mere assertion that the disputed incident occurred on March 3, 1982 rather than March 4, 1982, is not substantiated by any probative evidence whatsoever and is suggested for the first time in the record in Foreman Bihun's signed statement which has been offered as Carrier Exhibit H; (2) Carrier's assertion itself lacks consistency throughout its entire Submission; and (3) most significantly, the Board can find no evidence that this particular argument was ever raised by Carrier on the property, but instead was raised for the first time in Carrier's Submission.

Turning to the merits portion of this dispute, the Board is convinced that the particular activities which Supervisor Bihun engaged in while riding in Locomotive #48 of Train #2233 on March 4, 1982 were of the type and nature of work duties which were normally performed by Electricians and which are contained within the Electricians' job duties as specified in Rule #71. In this

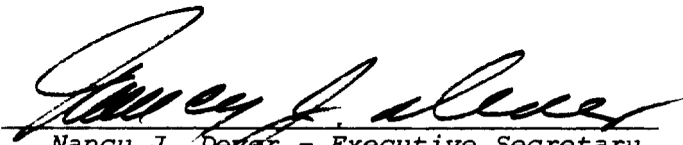
regard, the record clearly establishes that the specific purpose of Foreman Bihun's presence in Locomotive #48 on said date was to observe the functioning of the wheel slip indicator light which had been repaired earlier that afternoon by employees of the Electricians' Craft. Said observation was not incidental to Foreman's Bihun's presence in the locomotive, but instead was an extension of the electrical repair work which had occurred earlier that day. The fact that a separate road test was not scheduled in the instant case and that the 4:00 PM to 7:35 PM run itself may have been a normal run, has no bearing in the resolution of this dispute. Carrier's efforts to achieve economics of work performance, while laudatory, still do not relieve Carrier of its contractual obligations.

A W A R D

The claim shall be sustained and Claimant shall be compensated for three hours and thirty-five minutes at time and one-half at the then current rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 1st day of May 1985.