

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12593
Docket No. 12349-T
93-2-91-2-139

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That at the Fort Worth Centennial Yard, the Union Pacific Railroad Company (former T&P) herein after referred to as the Carrier, abolished the electrician job at the caboose track, effective at the close of shift on or about March 7, 1990. The Carrier, then assigned other than electricians to perform the Caboose Track Electricians' work. This is in violation of, but not limited to Rule(s) 22, 73 and 74, as well as articles and provisions of other existing agreements.
2. That the Claimants: J. R. Walker, K. W. Hogue, J. M. Thomas, E. W. Tucker, G. T. Roberts, R. D. Walter, D. D. Brittain, E. D. Large, J. M. Conrad, P. A. Buccieri, R. G. Ruby, Jr., R. B. Hardee, J. D. Sharp, C. W. Johnston, R. A. Rice, R. A. Vela, E. R. Guyden, S. R. Massey, P. D. Cook, G. W. Schmid, J. F. Kasmeier, B. C. Jackson, W. L. Groff, P. D. Fair, T. E. Diesslin, D. R. Bender, R. T. Hubbard, D. K. Warren, F. S. Saliba, J. L. Wisniski, K. C. Jackson, G. W. Tucker, J. Q. Fox, T. L. Townley, D. St. Clair, K. E. Mandich, I. Fox, R. L. Dobbins, J. A. Hays, J. L. Grubbs, G. D. Murphee and J. S. Fox, be compensated at their respective rates of pay, on a continuous basis, by reason of the Union Pacific Railroad Company assigning of other than electricians to perform electricians' work in violation of said rules commencing on or about March 7, 1990.

3. The Carrier should be ordered to cease and desist from continual assignment of other than Electricians to perform Electricians' work, and return to the electrical craft the work."

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 were given due notice of hearing thereon.

As Third Party in Interest, the Brotherhood Railway Carmen/Division TCU was advised of the pendency of this dispute and filed a Submission with the Board.

According to the Organization, Carrier abolished the Electrician Position on the caboose track at the Fort Worth Centennial Yard on March 7, 1990, and thereupon assigned to Carmen work which it argues is reserved to Electricians. The work in question involves the maintenance of end of train devices. These devices, which are used in lieu of cabooses, are installed on the coupler of the last car of a train. The device emits a flashing red light and transmits, via radio telemetry, information to the locomotive. This information may include train line air pressure and the speed of the train.

The Organization relies upon Agreement Rule 74-Classification of Work, which reads as follows:

"Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors, and controls, rheostats and controls; motor generators; electric welding machines; storage batteries, axle lighting equipment, electric clocks and lighting fixtures, winding armatures, fields, magnet coils, rotors, motors, transformers and starting

compensators; cables, cable splicing, inside and outside wiring at shops and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks; motor attendants, and all other work generally recognized as electrician's work."

The Carrier has denied that Carmen are performing work which is reserved to Electricians, and further asserts the Organization has failed to submit any evidence which would provide a factual basis for its claim.

In its Third Party Submission, the Brotherhood Railway Carmen denies that certain work falls within the Classification of Work Rule of the Carmen's Agreement. It specifically refers to the following:

"[T]he testing and repair and/or replacement of motion detectors, strobe boards, strobe lenses, internal air leaks, antennas, internal wiring and solder connections, plugs, snap latch components, battery charging, repairing of the battery packs, and the testing thereof as it is specifically related to a repair to ensure the proper operation of the system itself...."

The Carmen, however, assert that the installation and removal of such devices, as well as all work incidental thereto, is covered by the Carmen's Agreement.

The Board has concluded that the record in this Docket is incomplete due to procedural breaches of Board Rules by all parties concerned. The Board's decision, therefore, is based solely upon the record which is properly before it.

Although the Organization provided nearly five hundred pages of notes outlining the work performed by Electricians between October 17, 1985, and June 5, 1989, there is no evidence in the record which would indicate such work was actually being performed by Carmen at this location on and subsequent to the first date of claim.

The burden of proof in showing a violation of the Agreement in this case falls upon the Organization. It must first prove that the work is being performed by employees outside the scope of its Agreement. It must then establish that such work is exclusively reserved to Electricians. The fact that Electricians may no longer

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be performing the work in question is not sufficient to meet the burden of the threshold question. The Organization must show that the work is, in fact, being performed by someone else. Failing that, the claim must be denied without consideration of the question of exclusivity.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 22nd day of September 1993.