

Award No. 964

Docket No. 900

2-CB&Q-EW-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Electrical Workers E. T. Steinbach and C. S. Stegal, be paid the difference between Section (d) rate and Section (c) rate for all straight time and overtime hours performed for the period of August 3rd to 13th, 1942, both dates included.

EMPLOYEES' STATEMENT OF FACTS: The rate for Section (C) linemen is 87 cents per hour.

(See Rules 1 and 23.)

The rate for groundmen, Section (D) is 77 cents per hour.

(See Rules 1 and 23.)

The claimants are regularly employed in Class (D), with a seniority date as of—(A) C. S. Stegal, March 1, 1937 and (B) E. T. Steinbach, March 16, 1937.

These claimants, from August 2 to 14, 1942, were assigned and required to perform Section (C) lineman's work for groundman's Section (D) pay.

The duties required of these claimants were to perform identically the same work as linemen by taking their turn with linemen upon poles.

These claimants were paid 77 cents per hour. They claim 87 cents per hour and the carrier denied their claim.

POSITION OF EMPLOYEES: The scope of the controlling agreement reads as follows:

R U L E — 1.

SCOPE:

These rules shall govern the hours of service and working conditions of employes incumbents of the following positions:

- (a) Linemen assigned as equipment installers, lead cable splicers, and telegraph, telephone and teletype equipment repairers.
- (b) Linemen assigned as District Maintainers.

agreed to give, and this action was predicated upon the repeated assurance of Mr. Hartzheim that groundmen and helpers were, under the provisions of Rule 3, permitted to work on poles. At this point we quote from Exhibit 8:

"It was definitely understood that there would be no restrictions with respect to groundmen and helpers working on poles, i. e., climbing poles and performing service thereon. Mr. Hartzheim repeatedly raised this argument in support of his contention that rates should be increased, basing his conclusion on the fact that the committee did agree that such service is permissible.

At 2:30 P. M. Mr. Hoglund, after a short talk, wherein he expressed gratification in respect to the harmonious relationship that obtained throughout the conferences, told the committee that he would accept the following rates."

The committee used the argument set forth in the foregoing quotation in order to secure the wage increases which were granted. Therefore, perpetuation of the practice under which groundmen and helpers were permitted to work on poles was bought and paid for and the present attempt to take away from the carrier the consideration it paid for represents a palpable and unwarranted breach of contract to say nothing of good faith.

In seeming disregard of all the carrier had done in behalf of the employees, as evidenced in Exhibit 8, and indicating a most calloused indifference toward the rules and the integrity of the interpretations placed thereon by a responsible officer of the labor organization concerned, an effort was made to collect the Class (c) rate for groundmen who were used on poles in June, 1940. In this respect see carrier's Exhibits 9 and 10. The carrier was amazed that it would be subjected to such unjustified and unethical treatment, which could not be attributed to lack of understanding when it is considered that the ink was hardly dry on the agreement. In consequence thereof, Mr. Hartzheim was contacted and a meeting was arranged. It was held in the office of Mr. C. A. Worst, superintendent of the telephone-telegraph department. The carrier was represented by Messrs. Hoglund, Worst and Wolfe. The International Brotherhood of Electrical Workers was represented by Mr. Hartzheim and General Chairman Elliott. The circumstances were explained to Mr. Hartzheim and he emphatically stated that no person had ever been given reason to question the integrity of the organization he had the honor to serve. He thereupon instructed that this matter be closed. Nothing more was heard about it for more than two years when the claims involved in the instant controversy were filed.

Conclusions

A fair and unprejudiced appraisal of the evidence submitted, as such evidence is related to the circumstances which give rise to this controversy, is all the carrier desires or expects. Such consideration will lead to the following conclusions:

- (1) The stringing of wire on poles is linemen's work.
- (2) Being so classified, Rule 3 (d) permitted the claimants to assist in the performance of such service, just the same as they assist in the performance of all other work of linemen.
- (3) The foregoing was agreed to during negotiations which culminated in the June 1, 1940, agreement and was affirmed by Mr. Hartzheim in the handling of a prior dispute; therefore,
- (4) The claim is without merit and it must be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record supports the conclusion that in the circumstances of this proceeding claimants Steinbach and Stegal performed linemen's work, as defined in Rule 3 (c) of the prevailing agreement, and not groundmen's work, under the direction of linemen, as defined in Rule 3 (d) of the agreement, and that these claimants are entitled to be paid accordingly, as set forth in the employees' statement of claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1943.