

Award No. 1042

Docket No. 968

2-B&M-EW-'44

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: 1. That the installation of electrical equipment at the Billerica Locomotive Shops which consisted of 6 panel boards, 85 lighting fixtures and a new entrance, is electrical workers' work within the meaning of the controlling agreement.

2. That within the months of June, July, August and September, 1943, the carrier unjustly dealt with and thereby damaged the employes of the electrical workers' craft, regularly employed as such, by the arbitrary performance of the aforesaid work without the provisions between the covers of the controlling agreement.

3. That in consideration of all of the aforesaid, the carrier be ordered to additionally compensate by equally distributing at the applicable time and one-half rate for each man hour worked on the installation of electrical equipment in the Billerica Locomotive Shops without the provisions of the controlling agreement, during the months of June, July, August and September, 1943, between the following Engineering Department electrical workers:

1—Cidney Rowell; 2—Charles Carrol; 3—George Oldford;
4—Andrew Davidson; 5—Daniel Ahern; 6—Robert Kehoe;
7—William Merry; 8—Colin McCellan; 9—Paul Carrol;
10—Edward Heffernan; 11—Ted Croteau; 12—Edward McDermott;
13—Fred Kane; 14—Antonio Rea; 15—Robert Gribben.

EMPLOYES' STATEMENT OF FACTS: At Boston, Massachusetts, the carrier bargained with a contractor to improve the lighting facilities in the Billerica locomotive shops, which consisted of installing six panel boards, 85 lighting fixtures and a new entrance.

The carrier furnished the contractor the necessary material and the use of the shop cranes to install the lights. The contractor supplied the man power and used four (four) men to do the work, for the most part from 12 midnight to 7:00 A. M., which was outside the regular hours of this locomotive shop.

The contractor started this work during the last week in June, 1943, and finished it about the middle of September, 1943.

tion that while every man can refuse to work overtime, the railroad cannot refuse to ask every man to work overtime in order to perform necessary work. The two positions are entirely inconsistent.

This interpretation by the employees is made evident by the third paragraph of their notice of claim in which they request that the carrier be ordered to additionally compensate by equally distributing at the applicable time-and-one-half rate for each man hour worked on the installation of electrical equipment at Billerica locomotive shop without the provisions of the controlling agreement. In their words, they are not satisfied to claim straight time for any of these men but insist that every one of the fifteen men should be paid at time and one-half. The notice of claim does not pretend that the work could have been done during regular working hours by the force at the disposal of the railroad. The notice of claim admits that it would have to be done if performed by employees of the railroad during overtime hours at which punitive rates would have to be paid. The notice of claim does not state that the fifteen men named in the third paragraph were all available or willing to work overtime; in fact the railroad knows from experience that some of those fifteen men consistently refused to work overtime, yet the committee claims that whether or not these fifteen men were ready to work overtime, they are entitled to be paid time and one-half for the hours spent in performing this work.

Answering the notice of claim specifically the carrier says in answer to each paragraph as follows:

1. That the installation of electrical equipment at the Billerica locomotive shop, which consisted of six panel boards, 85 lighting fixtures, and a new entrance was performed by an outside contractor, but that it is not necessarily electrical workers' work within the meaning of the controlling agreement.

2. That within the months of June, July, August and September the carrier did contract to have this work performed but the carrier denies that it unjustly dealt with the employees of the electrical workers' craft and denies that an electrical worker was damaged thereby and calls upon the committee to prove wherein any man lost one hour of legitimate work to which he was entitled.

3. That the Board is without authority to order the payment of time and one-half for each man hour worked to the fifteen men named in the absence of proof that each one of those fifteen men was individually available and willing to work the amount of overtime which would have been necessary to complete the work under existing conditions.

It is a matter of interest that the fifteen men named are the entire electrical crew in the signal department on the railroad. They are not connected with Billerica shop; they are not involved in the maintenance of equipment or the maintenance of way. They are electrical workers customarily employed around the North Station Terminal area. Why this particular entire electrical crew should be picked out as the men entitled to time and one-half for this work rather than men employed in the Billerica shop does not appear. The claim is entirely without merit, is unfair, and has no equity, therefore, the carrier urges that the claim should 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 employee or employees involved in this dispute are respectively carrier and employee 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 carrier's broad contention that it has the unlimited right to have its electrical construction work performed by contractors not party to the agreement cannot be sustained. See First Division Awards 351 and 2171; Third Division Awards 615, 757 and 779; Second Division Award 924. We are of the opinion that the facts disclose a technical violation of the agreement. However, it is not every such violation that justifies sustaining a claim for compensation. See Third Division Award 1453. The record fairly discloses, and we are cognizant of the fact, that under present conditions it would have been extremely difficult, if not impossible, to augment the present force to the extent that the work could have been performed by employees of the company during regularly assigned hours. The record further discloses that there has been a dispute between the company and the employees over the right of the company to require that employees work overtime. The work involved was of such a nature that it required performance during the night, and to have required the regular employees to perform such work after their regular tour of duty, would have, to say the least, afforded complications and required excessive overtime hours. While the job was not an emergency, nevertheless, it was such that its prompt completion was essential. During the time this work was in progress all employees were working full time, and many were working overtime. We are convinced, therefore, that there was no intention by the carrier of depriving employees under the contract of any work. The act of the carrier was a good faith attempt to have essential work performed with reasonable dispatch, under adverse labor conditions. Better practice would undoubtedly have been for the company officials to have consulted the organization, but under the facts presented by this record, we are unable to determine that the failure to so act resulted in loss to the claimants.

AWARD

There was a technical violation of the agreement, but under the facts presented it was not such as will justify the claim for compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1944.