

Award No. 1530

Docket No. 1424

2-Pull.-EW-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier improperly assigned two Car Cleaners to remove a set of batteries from a Pullman Car and moved four other sets of batteries on October 19, 1949.

2. That accordingly the carrier be ordered to:

a. Discontinue the use of other than employees of the Electrical Workers Craft to perform the aforesaid work.

b. Compensate Electricians E. Branco and C. G. Bradford in the amount of two (2) hours and forty (40) minutes pay each at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: On October 19, 1949 at the Southern Pacific coach yard, Oakland, California, Assistant Foreman Wm. Welch furnished Car Cleaners Beasley, Check No. 46, and Judge, Check No. 493, with the necessary equipment and instructed them to remove a set of batteries from a Pullman car and move four other sets on to a shop truck.

Electricians Branco and Bradford, hereinafter referred to as the claimants, were assigned on the 9:00 A. M. to 5:30 P. M. shift with Wednesday as one of their rest days and were available to perform the work in question, if called, on Wednesday, October 19, 1949.

This dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement when two car cleaners were assigned to the moving of batteries instead of electrical workers in accordance with Rule 5(b) which provides:

The company submits that the instant claim should be denied for the following reasons:

1. No rule of the working Agreement contains any provision that precludes the Company from proceeding in the manner found here.
2. The occasional use of car cleaners to move batteries under the supervision of journeymen electricians is in conformity with the practice of many years' standing, which practice was not abrogated by the current working Agreement or by any other Agreement.
3. Awards of the National Railroad Adjustment Board clearly establish that where a contract has been negotiated and existing practice is not abrogated or changed by its terms, such practices are as valid and enforceable as the written provisions of the contract itself.

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 record discloses that on October 19, 1949, from 1:30 P. M. to 3:30 P. M., at its coach yard in Oakland, California, the company assigned two car cleaners, employes not covered by the current agreement, to assist the head electrician in moving batteries from a Pullman tourist car and in loading four sets of batteries upon a Pullman truck, paying them at the electrician helpers' rate. At the time the cleaners were utilized the claimant electricians were available to perform the work in question and the company had no electrician helpers assigned at such yard.

After careful examination of the record, and consideration of contentions advanced by the parties, we are convinced the current agreement must be construed as requiring the company to assign the work of moving batteries at the yard in question to electrical workers covered by its terms. Further construing the agreement we hold the term "electrical workers" as used therein covers and includes electrician helpers who, in the exercise of the company's discretion, may be assigned to perform such work in lieu of journeymen.

In explanation of its action the company asserts there is not enough work of the character involved to justify the assignment of an electrician helper at the Oakland yard, and further, that it has always followed the practice of temporarily promoting cleaners to do such work. Under the confronting facts neither of these reasons suffices to justify the carrier's action. Work encompassed within the scope of an agreement cannot be removed therefrom and assigned to employes not covered by its terms. This is so even though it becomes necessary to call a higher rated employe to perform it.

Based on what has been heretofore stated we find the company's action violated the agreement. Therefore, portions of the claim designated as 1 and 2(a) should be sustained in their entirety while 2(b) should be partially sustained with compensation limited to two hours and forty minutes pay for each claimant at the pro rata rate, that being the proper penalty rate for deprivation of work.

AWARD

Claim sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1952.