

Award No. 1625

Docket No. 1516

2-PULL-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty 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 the current agreement was violated when two Cincinnati Union Terminal Electricians were assigned on July 8, 1951 to apply 4-KW Generator Belts to Pullman Tourist Cars Nos. 3049 and 4259.

2. That accordingly the Carrier be ordered to:

- a) Discontinue the use of other than Pullman Company Electricians to perform electrical work on Pullman equipment.
- b) Compensate Pullman Company Electricians V. Costa and L. J. Cleary each in the amount of 2 hours and 40 minutes compensation at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Sometime after 11:00 P. M. on July 8, 1951, two electricians employed by the Cincinnati Union Terminal Company were assigned to apply 4-KW generator belts to Pullman tourist cars Nos. 3049 and 4259.

Pullman Company Electricians V. Costa, employed on the 9:00 A. M. to 5:30 P. M. shift, and L. J. Cleary, employed on the 7:00 A. M. to 3:30 A. M. shift, were available to perform this work on July 8, 1951, if called.

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

POSITION OF EMPLOYES: It is submitted that Rules 2, 5(b) and 37 of the current agreement were violated when other than Pullman Company

accordingly held if it be shown claimants could have been made available in accordance with the applicable articles of agreement to have performed the service for which claim is here made, claim is held to be valid; otherwise not." (See also Award 10744, Docket No. 19133. Additionally, see Second Division Awards 43 and 1124.)

CONCLUSION

In this dispute the Company has shown that there has been no violation of Rules 2 or 5 of the Agreement as a result of the Company's inability to make available a Pullman electrician to perform the work of applying generator belts to Tourist cars 3049 and 4259 on July 8, 1951. Since the company had no advance notice that cars 3049 and 4259 would be in need of repairs upon arrival in Cincinnati, the performance of such work in the emergency by Cincinnati terminal electricians cannot successfully be construed as a violation of the above-mentioned rules of the agreement. Further, the company has shown that Rule 33 is not applicable to this dispute inasmuch as the rule relates solely to instances where Pullman employees are called to perform certain work. The rule is silent on the compensation an employee is due when the company fails to call him to perform work allegedly due him.

Awards of the National Railroad Adjustment Board establish that in emergency conditions management is not culpable if there was not sufficient time for the company to place its forces in line to perform the work in question. The record in the instant case is persuasive of the fact that the company had no advance notice that cars 3049 and 4259 were in need of repairs. Further, there was not time in the emergency in Cincinnati on July 8, 1951, to call a Pullman electrician to the station, which action would have delayed the departure of the second section of B&O train No. 11. Therefore, in the emergency, it was proper for terminal electricians to apply the generator belts.

Finally, even if the work properly should not have been performed by terminal electricians, the company does not agree that it is required to pay Electricians Costa and Cleary in the amount of 2:40 hours at the rate of time and one-half instead of at the straight time rate.

In view of these facts the company submits that the instant claim is without merit and 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.

When on July 8, 1951, second B&O Train No. 11 arrived in Cincinnati Terminal at 11:59 P.M., 4-KW generator belts were found missing from Pullman tourist cars 3049 and 4259. At 11:30 P.M. of that day two Pullman electricians had been released from Terminal duty at their regular times. It appears also that a third Pullman electrician had been sent from Terminal duty to yard duty at that time. In the absence of a Pullman electrician when the train arrived, two Terminal electricians made the necessary repairs.

The carrier admits technical violation of its agreement with the organization but asks avoidance of penalty therefor because the carrier did not know that the train would arrive needing the above-mentioned belts.

Applying to the instant case the principles and reasoning of our Awards Nos. 1601 and 1622, we find that the carrier violated the parties' agreement, the violation could have been avoided by proper controls, and the organization's claim should be sustained at pro rata rates in respect to the senior employee available for call.

AWARD

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January, 1953.