

Award No. 1677
Docket No. 1576
2-C&O-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE CHESAPEAKE & OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement other than an Electrician was improperly used to inspect and test storage batteries and battery connections on Diesel Electric Locomotive No. 5009 on August 31, 1951.

2. That accordingly the Carrier be ordered to compensate Electrician L. D. Verhine in the amount of four (4) hours' pay at the straight time rate.

EMPLOYEES' STATEMENT OF FACTS: At Old Point Junction, Newport News, Virginia at approximately 6:30 A.M. on August 31, 1951 the crew of diesel electric Locomotive No. 5009 were unable to start engine due to totally discharged storage batteries.

Roundhouse Foreman Murphy performed the work of inspecting and testing battery connections and specific gravity of battery solution.

Electrician L. D. Verhine, hereinafter referred to as the claimant was available to perform this work if called.

The agreement effective July 1, 1921, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that under Rule 32(a) reading in pertinent part as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft . . ."

it was improper to use Roundhouse Foreman Murphy to perform electrical work classified as work of electricians in Special Rule 140.

The claimant having seniority as an electrician at the point involved is subject to be made whole by this Division sustaining the claim of employees because the lifting of work covered by an agreement and assigning it to employees not covered by its terms, constitutes a violation of the scope rule.

the National Agreement rule as too restrictive, and the Labor Board added paragraphs (b) and (c) to the old national rule. We are not left to surmise or conjecture as to the Board's intent when it added paragraph (b) to the rule. In Decision No. 405, issued November 19, 1921, only 10 days before it issued Rule 32 in Addendum No. 6, the Board held as to the National Agreement Rule —

“Decision—The Labor Board does not construe the language of Rule 32 above referred to as prohibiting supervisory employees from instructing other employees in the performance of their work, whereby to carry out such instructions it is necessary that they perform certain mechanics' work; nor is it the Board's construction of that rule that such supervisory employees are prohibited from performing emergency service where mechanics are not available.”
(Emphasis supplied.)

This interpretation definitely establishes that the Board had in mind and provided for just such a situation as is here in question when it wrote the second paragraph of Rule 32.

The carrier applies in good faith “Classification of Work Rule 140” of the electricians' special rules. When electrical work develops on the second and third shifts at Old Point Junction, electricians working at the piers are sent to the junction or electricians are called. But, in such circumstances as are involved in this case, General Rule 32 is paramount over any special rule, and the performance by a foreman of work in the exercise of his duties is clearly within the meaning and intent of Rule 32.

Carrier submits that in all respects the agreement rules were complied with, and that the claims 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 employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as aproved 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.

There is insufficient evidence presented in this case to substantiate the claim that foreman performed the work in question of a substance that would constitute a violation.

The evidence presented in this case does not substantiate the claim.

AWARD

Claim disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1953.