

Award No. 1685

Docket No. 1562

2-PULL-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly permitted a Western Pacific Railroad employe to repair electrical and air-conditioning equipment on Pullman Cars CZ-10, CZ-11, CZ-12 and CZ-15, operating on train California Zephyr during the months of August and September, 1951.

2. That accordingly the carrier be ordered to:

- a) Stop the practice of permitting the Western Pacific Railroad employe to perform the work contracted to Pullman Company electricians.
- b) Compensate L. Bidou and P. Anderson for 14 hours each at the applicable overtime rates.

EMPLOYEES' STATEMENT OF FACTS: The carrier during the months of August and September, 1951 permitted the Western Pacific Railroad employe to inspect and repair the electrical and air-conditioning equipment on Pullman Cars CZ-10, CZ-11, CZ-12 and CZ-15 operating on the train California Zephyr.

Electricians L. Bidou and P. Anderson, hereinafter referred to as the claimants, are employed on the 12 Midnight to 8:00 A.M. shift and were available for the work involved in the dispute. The claim for fourteen (14) hours handled on the property does not represent the time and compensation due the claimants under the agreement. However, such claim is not subject to change at this late date and in view thereof, it will stand as written and represents only the actual hours worked by this railroad electrician in making repairs not including time the railroad electrician spent, inspecting, waiting and traveling.

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

POSITION OF EMPLOYEES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement when they permitted the Western Pacific Railroad employes to

cite the rule supporting its claim that Electricians Bidou and Anderson should be compensated for 14 hours each at the applicable overtime rate. Obviously, the organization has merely elected an arbitrary period of time without regard to facts or rules.

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 did not have advance information of the need to have emergency electrical work performed on Pullman cars operating on the California Zephyr during August and September, 1951. Inasmuch as there was no opportunity to assign a Pullman electrician to perform such work the Company submits that in such emergency it was proper for railroad electricians along the route of the train to perform that work.

Finally, even if the work properly should not have been performed by railroad electricians, the company is unable to understand why the organization requested 14 hours each at applicable overtime rate in behalf of Electricians Bidou and Anderson. The organization is fully apprized of the fact that the Awards of the National Railroad Adjustment Board consistently hold that the proper compensation for work not performed is the straight time rate of pay of the individual in question.

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 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 organization claims that the Pullman Company improperly permitted a Western Pacific Railroad electrician to make repairs to electrical and air-conditioning equipment on certain specified Pullman cars operating on the California Zephyr during the months of August and September, 1951.

The record shows that the Western Pacific Railroad Company used railroad electrician B. C. Irvin as a train rider for the purpose of protecting railroad equipment on the train. Somewhere enroute, he made some emergency repairs on the Pullman cars in question. The organization contends that claimants, two Pullman Company electricians assigned at Oakland, California, should have been assigned to this work.

The claim does not state where or when the work was done, other than a rather plain inference that it was while the train was operating enroute. It does not set forth the time required to perform the work but assumes that the railroad electrician spent the fourteen hours he was on the train in such work. We point out that the scope rule of the applicable agreement contracts all electrical work to Pullman electrical employees exclusively that is performed in repair shops, mechanic shop Chicago, districts and agencies of the Pullman Company. Emergency repair work on operating trains or at places not within the purview of the scope rule is not the exclusive work of Pullman electricians. It has been a practice of long standing to have such emergency repairs performed by railroad electricians when there were no Pullman electricians available.

The carrier admits that some emergency repair work was done at Marysville, Oroville, or Portola, California, or between such points, during the period of the claim. No Pullman electrician was assigned or available at any of these points. The allegations of the carrier that the work was emergent and unforeseen is not successfully refuted by the organization. The vagueness of the claim and the indefiniteness of the proof in support thereof, is such as to preclude an affirmative award.

***AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 15th day of July, 1953.