# Award No. 1686
# Docket No. 1579
# 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 award was rendered.**

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## 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 other than Pullman Company Electrical Workers to apply a generator belt and cover to Pullman Cars at Colorado Springs on March 4, 1952.

2. That accordingly the carrier be ordered to discontinue using other than Pullman Company Electrical Workers to perform this work and compensate Electrican K. C. Karr in the amount of eight (8) hours at the time and one-half rate and two and one-half (2½) hours at double time rate.

EMPLOYES' STATEMENT OF FACTS: On March 4, 1952 the carrier assigned Carman G. B. Pierce, employed at Denver, Colorado, to go to Colorado Springs to make necessary repairs to cars in Main 2396 resulting from cars freezing up. After the arrival of these cars at Colorado Springs is was found that a generator belt was missing on one car and a generator cover missing on another car. The carrier was advised of these missing parts and sent a generator belt and generator cover from Denver to Colorado Springs and such parts were applied by Carman Pierce.

Electrician K. C. Karr, employed at Denver, Colorado, hereinafter referred to as the claimant, was available to perform this work if called.

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 they sent a generator cover and belt to Colorado Springs

lishing the right it will not be held that the carriers and employes contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employes over a long period of time supports the position taken by the carrier in the construction of the cited rules.' Of course, repeated breaches do not abrogate a clearly expressed contract provision, but where the contract is silent, or the meaning of a provision is not clear, the long-continued practice of the parties is most persuasive proof that the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

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

1. No rules of the working agreement contain any provision that precludes the company from proceeding in the manner found here.

2. The principle set forth in Rule 2 of the agreement between The Pullman Company and its electrical workers and Rule 32 of the agreement between The Pullman Company and its carmen clearly sets forth that no particular craft is entitled to perform work at points such as Colorado Springs, which points are not under the jurisdiction of any district or agency.

3. Awards of the National Railroad Adjustment Board clearly establish that where a contract has been negotiated and existing practices are not abrogated or changed by its terms, such practices are as valid and enforceable as the provisions of the written contract.

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.

On March 4, 1952, carrier directed Carman G. B. Pierce to proceed from Denver to Colorado Springs, a distance of about 75 miles, to thaw out some cars which had frozen up and to make needed repairs in connection therewith. About noon of the same day, the Denver office was notified that one of the cars needed a new generator belt and that a second car had a generator cover missing. The required equipment was immediately sent to Colorado Springs where it was applied by Carman Pierce. The claimant is a Pullman electrician assigned at Denver. He claims that he should have been called for the work and asks that he be compensated therefore.

The case is identical in principle with that decided by Award 1684, (Docket 1559). Denver is a district or agency within the purview of the scope rule while Colorado Springs is not. For the reasons stated in Award 1684, the work performed at Colorado Springs was not the exclusive work of Pullman electricians and a denial award is required. The correctness of the assignment of a Pullman Company Carman to do this work is not before the Division.

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.