Award No. 1705
Docket No. 1613
2-PULL-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke 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 has been violated since May 28, 1952 when P.R.R. and B & O Railroad employes are assigned to perform standby, precooling and station duty to Pullman cars after 5:00 P.M. each day at Baltimore, Maryland.

2. That accordingly the Carrier be ordered to:

(a) Discontinue the use of other than Pullman Company Electricians to perform this electrical work on Pullman equipment.

(b) Compensate Pullman Electricians who were entitled to perform this work at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: That The Pullman Company has arranged with Pennsylvania and Baltimore & Ohio Railroad companies to have their employes perform standby, precooling and station duty to Pullman cars after 5:00 P. M. each day at Baltimore, Maryland.

Pullman Company electricians who are employed on the 8:30 A. M. to 5:00 P. M. shift were 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 Rules 2, 5(b) and 37 of the current agreement were violated when other than Pullman Company electricians were assigned to perform electrical work on Pullman cars.

The applicable part of Rule 2 provides:

"Assignment of Work.

None but journeymen or apprentices employed as such shall perform the work outlined in Rule 5 of this agreement."

2. The company has no control over the work claimed by the organization and Pullman electricians have never performed the work in question.

3. The Special Board of Adjustment established in 1949 supports the company's position that a contract between the parties relates to work over which the company has control.

4. The organization was well aware that prior to and since the effective date of the present I. B. E. W. agreement other than Pullman electrical workers were performing the work herein claimed by the organization.

5. 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.

Claim is made that, since May 28, 1952, the Company has violated, and is continuing to violate, the scope of its agreement with its Electrical Workers by having railroad employes, electricians, "perform standby, precooling and station duty to Pullman cars" at Baltimore, Maryland, after 5:00 P. M. It appears from the record that regularly assigned Company electricians are on duty from 8:30 A. M. to 5:00 P. M. and, while on duty, perform these services whereas railroad electricians perform them when the Company electricians are off duty.

Rule 5 (b) of the parties' effective agreement, in so far as here material, provides:

> "Electricians' work shall include . . . precooling and standby service . . . and all other work generally recognized as electricians' work."

And, in regard to the performance thereof, provides:

> "None but journeymen or apprentices employed as such shall perform the work outlined in Rule 5 of this Agreement."

The Company contends, and we agree, that the scope of its agreement with its Electrical Workers relates only to the work over which it has control. In this respect it appears, from the quoted provisions of the Company's agreement with the carriers, referred to as the "Uniform Service Contract," that the Company is to maintain the air-conditioning apparatus on Pullman cars unless the carriers otherwise elect. The latter is not entirely the situation here.

In this respect, it is admitted the Company does not have the work of maintaining, repairing and servicing Pullman cars operating with B. & O. York-type air conditioning systems as this work has been reserved by that

carrier. Consequently the scope of the Electrical Workers' agreement with the Company would not cover Pullman cars so equipped. Likewise it would not cover Pullman cars with ice activated cooling systems which require no precooling service of a mechanical nature. But as to all other mechanical type air conditioning systems in Pullman cars, which require precooling, the service thereof would be covered by the scope of the Electrical Workers' agreement and cannot, with immunity, be removed therefrom and assigned to employes not subject to the terms thereof. See Award 1269 of this Division.

The Company also contends that it has had this work performed in this manner ever since air conditioning of Pullman cars was instituted and that this past practice is here controlling. This would be true if the scope rule did not abrogate it. Past practices are only controlling when the scope rule is general in character and can be said to only encompass work, which, at the time of its execution, was usually and customarily being performed by the employes covered thereby. But where, as here, the scope rule is specific and definitely defines the work encompassed thereby it has the effect of abrogating any past practice in conflict therewith.

The fact that no Company electrician was on duty at the time need for this service arose is not controlling. As stated in Award 1269: "This (that work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms) is true even if in having the work performed it becomes necessary for the carrier to call employes subject to the terms of the agreement and working them on an overtime basis." (Our insertion) Nor is the fact that only a small amount of work is involved controlling for the whole scope of any collective bargaining agreement must necessarily include many smaller units of work. They are as much a part of the work covered by the agreement as the larger units and cannot be taken therefrom by the Company with immunity.

It should be understood we are not here dealing with a point where there is not sufficient work to warrant the establishment of a full time station duty electrician's position. Just what the answer would be if that were the situation we need not and do not decide. Here such positions were regularly in existence from 8:30 A. M. to 5:00 P. M and, if need therefore arose, the occupants thereof could have been called.

While we are of the opinion that the claim should be sustained, however, we think it should only be on a pro rata basis for the reasons set forth in our Award 1269. See also our Awards 1530 and 1601.

AWARD

Claim sustained as per findings but on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1953.