# Award No. 1706
# Docket No. 1614
# 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.**

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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 inspect electrical equipment and precool Pullman Cars LAKE FLORENCE, WONALANCET, MOGALLAN, GALLUP, ELM TRAIL, GLEN GYLE, NIGHT LINE and GOLDEN STREAM; also replaced tension bolt to standby motor and new fan belts on Car NIGHT LINE; repaired open speed control circuit on Car ELM TRAIL; made adjustment to caterpillar on Car GLEN GYLE at Houston, Texas on July 18, 1952.

2. That accordingly the Carrier be ordered to discontinue using other than Pullman Company Electrical Workers to perform this work and compensate Electrician O. E. Cooper in the amount of eight (8) hours at the time and one-half rate.

**EMPLOYES' STATEMENT OF FACTS:** On July 18, 1952, a Santa Fe Electrician was assigned to inspect electrical equipment and precool Pullman Cars LAKE FLORENCE, WONALANCET, MOGALLAN, GALLUP, ELM TRAIL, GLEN GYLE, NIGHT LINE and GOLDEN STREAM. He also made repairs as follows: replaced tension bolt to standby motor and applied new fan belts on Car NIGHT LINE; repaired open speed control circuit on Car ELM TRAIL; made adjustments to caterpillar on Car GLEN GYLE.

Pullman Company Electrician O. E. Cooper, 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 assignment of other than Pullman electricians to perform the work involved in this dispute is contrary to the provisions of the current agreement as Rule 2, first paragraph provides:

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

F. Carter, Referee), the Board has no power to rewrite the contract or to relegate to itself the powers and duties of the parties. And in Award No. 5396, page 8, (1st Division, Hon. Robert G. Simmons, Referee): 'In the absence of rules clearly establishing 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 claim should be denied for the following reasons:

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

2. The company has assigned Pullman electrical workers to perform all work in connection with Pullman cars to which they are entitled.

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

4. 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 approvd 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.

Eight Pullman cars arrived Houston, Texas, at 8:00 A.M. in a special train, "Knights of Columbus," on the Gulf Coast Lines. This train was en-route from Miami, Florida, to San Francisco, California. Shortly after it arrived at Houston the passengers detrained and immediately thereafter these cars were turned over to the Atchison, Topeka and Santa Fe Railroad. The special train was to continue west over the Santa Fe, being scheduled to leave Houston at 3:00 P.M. on the same day. After these cars had been turned over to the Santa Fe it assigned one of its electricians to inspect the electrical equipment and precool all eight cars. He did so and also replaced a tension bolt to a standby motor and put new fan felts on one of the cars, repaired an open speed control circuit on another and made adjustments to caterpillar on a third. The Electrical Workers of System Federation No.

122 claim the Company violated its agreement with them by having this work performed by others not under its agreement with the Company.

> "Work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms:" Award 1269 of this Division.

Rule 5 (b) of the parties' agreement, insofar as here material, provides:

> "Electricians' work shall include . . . repairing, inspecting, removing and applying . . . generators . . . electrical fixtures inside and outside of cars . . . maintenance of all car conditioning systems in their entirety . . . precooling and standby service . . . belts . . . speed controls . . . and all other work generally recognized as electricians work."

In regard thereto Rule 2 of the same agreement provides:

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

The quoted language of Rule 5 (b) encompasses the work here performed but the scope of the Company's agreement with its Electrical Workers relates only to the work over which it has control. Under its agreement with the carriers, referred to as the "Uniform Service Contract," it would appear that the Company would have control of this work unless a carrier elected otherwise. This it appears the Santa Fe has done. In view thereof the Company did not have control of this work after the cars had been turned over to the Santa Fe. Not having control thereof it did not come under the scope of the Company's agreement with its Electrical Workers.

## AWARD

Claim denied.

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.