

Award No. 1798

Docket No. 1629

2-PULL-EW-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the 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 under the current agreement the Carrier violated Rule 15 when they assigned Electrician H. Goldschnikl to fill temporarily the place of a supervisor during the periods of March 24, 1952 to May 25, 1952 and June 16, 1952 to August 12, 1952 and did not pay him accordingly.

2. That accordingly the Carrier be ordered to compensate Electrician H. C. Goldschnikl the difference in pay from what they did pay him and what he should have earned in accordance with Rule 15 during these assignments.

EMPLOYES' STATEMENT OF FACTS: Electrician H. Goldschnikl, hereinafter referred to as the claimant, is employed as an electrician with relief days of Saturday and Sunday and regular bulletined hours 7:45 A. M. to 12:00 Noon and 12:45 P. M. to 4:30 P. M.

The carrier assigned the claimant to fill temporarily the place of Supervisor R. Danielson from March 24, 1952 to May 25, 1952 and paid him during this period at a monthly rate of pay.

The carrier assigned the claimant to fill temporarily the place of Supervisor R. Danielson from June 16, 1952 to August 12, 1952 and paid him during this period at a monthly rate of pay.

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

Simply stated, the rule upon which the organization relies provides that an electrician temporarily assigned to fill the place of a supervisor shall receive 12 cents per hour over and above the minimum rate paid electricians for the time so engaged—straight time rate for straight time hours and overtime rate for overtime hours. The provisions of the rule are applicable to an electrician who does not possess supervisory seniority and who is assigned temporarily to fill the place of a supervisor. Rule 15 does not apply to an electrician who has been promoted to a supervisory position as contemplated by "Rule 44. **Employees Considered for Promotion.**" The rule plainly contemplates that the electrician who is temporarily assigned to fill the place of a supervisor shall not be considered as in the position of a supervisor. As an electrician who does not possess supervisory seniority, he is subject to the 12 cents per hour differential paid electricians for temporarily taking the place of a supervisor. The provisions of Rule 15 plainly are not applicable to Goldschni for Goldschni was assigned as a supervisor to fill a supervisory position and not to fill temporarily the place of a supervisor. It is obvious that the organization is attempting to misconstrue the rules of the electrical workers' agreement which are applicable to this dispute in such manner as to make it appear that any electrician, regardless of whether he holds supervisory seniority, must be paid the hourly differential.

CONCLUSION

The company has shown that there has been no violation of Rule 15 of the electrical workers' agreement in the manner in which Goldschni was paid for the periods he filled supervisory positions in the Calumet Shops, March 24-May 25, 1952 and June 16-August 12, 1952. Further, the company has shown that Rule 44 of the electrical workers' agreement does not negate the company's position in that it contemplates that electrical workers shall be promoted into supervisory positions.

Finally, the Company has shown that Rule 14, paragraph (b), of the A.R.S.A. agreement confirms the correctness of the company's position in this case.

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.

Electrical Workers of System Federation No. 122 contend the company violated Rule 15 of their effective agreement in paying Electrician H. Goldschni while using him in a supervisory capacity.

Rule 15 provides:

"Filling Supervisory Positions Temporarily. Should an electrician be assigned to fill temporarily the place of a supervisor, he shall receive 12 cents per hour over and above the minimum rate paid electricians for the time so engaged—straight time rate for straight time hours and overtime rate for overtime hours."

This is a pay rule and there is nothing in the language that is mandatory insofar as the company must use electricians to temporarily fill the place of

a supervisor. It merely provides the basis of pay in case an electrician is so used. In this respect the first paragraph of Rule 44 of the parties' agreement comes into play. It provides:

"Employees Considered for Promotion. Employees covered by this Agreement shall be considered for promotion to supervisory positions, selection to be made in accordance with seniority and qualifications."

Claimant was an electrician in the Calumet Repair Shops, Chicago, with seniority as such. Immediately prior to March 24, 1952 he did not have seniority as a supervisor. On that date the company, as Rule 44 provides it may do, promoted him to a supervisory position and gave him a seniority date in that class of employees as of March 24, 1952. He remained therein until May 25, 1952 when he returned to the ranks of electrical workers. Rule 44 provides:

"Employees promoted to supervisory or official positions with The Pullman Company shall retain and continue to accumulate seniority in the position and repair shop, district or agency from which promoted."

He was recalled to service in a supervisory capacity on June 16, 1952 and served until August 12, 1952. Carrier's right to so use a furloughed supervisory employe is fully discussed by our Award 1796 based on Docket 1623. While so serving claimant was entitled to the pay of the supervisory position he occupied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1954.

DISSENT OF THE LABOR MEMBERS TO AWARD 1798

It is the contention of the majority that claimant was promoted to temporary assistant foreman and that he was subject to the supervisor's agreement during the period worked.

We do not concur with this view. The record in this case does not disclose that claimant acquired a seniority date as a supervisor, that he was ever placed on the supervisor's seniority roster, or that he was furloughed as a supervisor on November 22, 1952.

The record discloses that claimant was first assigned to fill temporarily the place of a supervisor between the dates of Monday, March 25, 1952 and Friday May 23, 1952 inclusive, a total of 45 days. Claimant resumed his regular assignment as electrician at Calumet Shop on Monday, May 26, 1952.

The record discloses that claimant was again assigned to fill temporarily the place of a supervisor between the dates of Monday, June 16, 1952 and

Tuesday August 12, 1952 inclusive, a total of 42 days. Claimant resumed his regular assignment as electrician at Calumet Shop on Wednesday, June 17, 1952.

The majority has erred in its findings and award in Docket 1629, Award 1798. Rule 15 is clearly applicable to claimant in the instant dispute.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

George Wright