

Award No. 1879

Docket No. 1759

2-AT&SF-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L.—ELECTRICAL WORKERS**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreements it was improper to assign licensed Electronic Technician E. Imerson on Saturday, August 15, 1953, to work on that date in the place of non-licensed Electronic Technician Adam Ardovitch.

2. That accordingly the Carrier be ordered to make non-licensed Electronic Technician M. C. Waldie whole in the amount of wages for 8 hours which were paid to said E. Imerson on the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: Mr. Adam Ardovitch, a non-licensed electronic technician, employed by the Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at 21st Street, Chicago, Illinois, was assigned to take his annual vacation on August 4 through August 16, 1953. This ten (10) day vacation period vacancy was filled on an overtime basis by the assignment of employees who were available for duty on their rest days. A copy of the bulletin dated July 21, 1953, making such assignments, is submitted herewith and identified as Exhibit A.

Mr. M. C. Waldie, hereinafter referred to as the Claimant, is a non-licensed Electronic Technician holding seniority as such on the same seniority roster with Mr. Ardovitch. A copy of the seniority roster dated June 1, 1953, is submitted herewith and identified as Exhibit B.

The claimant is employed by the carrier at 21st Street, Chicago, Illinois, with rest days of Saturday and Sunday.

The claimant filled the vacation vacancy of Mr. Ardovitch on August 8, 1953, as per Exhibit A, and was available for duty on Saturday, August 15, 1953.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

ranks of either mechanical department and/or communications department electricians; thus clearly indicating that the intent of paragraph a. of Item 5 was to guard against the work being transferred to the communications department effective June 1, 1953, with a potential reduction in the mechanical department force.

Please observe that under paragraphs a. and b. of Item 1, licensed and non-licensed technicians may perform the work of either with the notable exceptions—the limitations are—

(1) That electronic technicians licensed or non-licensed may not install such equipment on locomotives and cars (original installation); and

(2) That non-licensed men may perform all work outlined in paragraph a. of Item 1 (Licensed Electronics Technicians) except that for which a Federal Communications Commission license must be held.

The line of demarcation is thus clearly drawn, but when, as here, circumstances are such as to make the use of a licensed man in place of a non-licensed one necessary, there can be no basis for legitimate complaint, especially when that was done in equalization of overtime under Rule 10 of the general agreement.

In conclusion, it is pointed out that Ardovitch was, on the date of this claim (August 15, 1953), absent from duty on vacation. It is not claimed that Ardovitch should have been called, but rather that non-licensed Electronic Technician Waldie should have been used instead of licensed Electronic Technician Imerson, and that the claimant (Waldie) "should have been made whole in the amount of wages for 8 hours which were paid to Imerson on the aforementioned date (August 15, 1953)", or, as the carrier understands it, at one and one-half times his regular shop rate. Innumerable awards of the various Adjustment Boards are to the effect that "The right to work is not the equivalent of work performed, so far as the overtime rule is concerned." See Second Division Awards 1268 and 1269, Third Division Awards 3504, 4203 and others.

If Local Chairman Waldie actually considered the use of a licensed electronic technician or non-licensed work a violation of Memorandum of Agreement No. 8, it would seem he would have made such views known to the proper authorities when bulletin was posted July 31 (copy of which was furnished him at that time) listing the names of employees who were to work in Ardovitch's position during his absence August 4 to August 15, both inclusive. The record shows that during the period involved, a non-licensed electronic technician was used in Ardovitch's position on August 4, 5 and 6, a licensed man on August 7, a non-licensed man on August 8 (August 9 and 10 were rest days of the position) 11, 12 and 13, and a licensed electronic technician on August 14 and 15, the latter date being the day worked by licensed Electrician Imerson. Notwithstanding this fact, Mr. Waldie's exception to the plan deals only with the use of licensed Electronic Electrician Imerson on August 15. As has already been stated, if he sincerely felt that there was a violation of the agreement, he would have protested the use of a licensed electrician on August 7 and 14.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Organization contends that carrier improperly assigned a licensed electronic technician on overtime to fill a vacancy created by absence of a non-licensed electronic technician due to vacation. The controlling agreement (Memorandum No. 8 thereof) sets forth the type of work for which licensed electronic technicians are used. It is further provided that non-licensed electronic technicians may be assigned to perform all the work specified for the licensed group, except with respect to that work for which a Federal Communications Commission license is required. It follows that both categories of employees may, and do, perform work which does not require a F. C. C. license. Both licensed and non-licensed technicians have seniority in the electronic technician class but employees assigned to non-licensed positions are "not permitted to exercise such seniority over any licensed employee in that classification." (Section A 5, Paragraph b, Memorandum No. 8.)

We are unable to find carrier has violated the agreement in this instance. The organization refers to agreement General Rule 10 (b), which reads:

"Overtime will be distributed equally among the employees of each shift by crafts, qualification of the employee to do the work to govern."

There is no evidence in the record, however, that carrier was making an unequal distribution of overtime during the period in question. Nor can we say that by filling in for a non-licensed electronic technician a licensed man is working outside his classification or craft. We have seen that the work jurisdiction of a licensed technician is co-extensive with that of a non-licensed man, and covers licensed work as well. The underlying premise of the claim is that these two groups of employees have mutually exclusive scope rules, but such premise is not supported by the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.