Award No. 1970
Docket No. 1818
2-IC-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Electrical Workers of the Maintenance of Equipment Department were improperly used to install a Three-Inch Conduit and a Square D Switch in the Paint Shop at Burnside Shop on October 15 and 16, 1951.

2. That accordingly the Carrier be ordered to additionally compensate Electricians C. Benson, R. Ziegner, I. M. Roll, W. E. Taylor, Victor Spindler and W. S. McLaren in the amount of 48 hours pay at the time and one-half rate divided amongst them.

EMPLOYES' STATEMENT OF FACTS: On October 15 and 16, 1951, the carrier assigned the forces of Mr. Mawhinnie, supervisor of electrical maintenance, consisting of six men, to install one Square D Switch with a three-inch conduit in the paint shop at Burnside Shops.

Maintenance of equipment department electricians named in Part 2 of the claim (hereinafter referred to as the claimants) were available and willing to perform this work in lieu of maintenance of way department electrical workers covered by Section "B" agreement effective April 1, 1935.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust same.

The agreement effective April 1, 1935, identified as Section A, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the scope of this agreement contained on Page 1, reading as following:

> "It is understood that Section A shall apply to those who perform the work specified therein, as employed in the Maintenance of Equipment Department."

and Rule 117 and Understanding, dated July 1, 1940, reading:

7, 1951, Mr. Kann wrote Mr. Wall, confirming that conference on the Section 6 notice had been held and terminated, and stating that the territorial scope of the roster in question would be adjusted in accordance with the procedure provided for in the Railway Labor Act. Copy of that letter is submitted herewith and identified as carrier's Exhibit B-4.

Section 6 of the Railway Labor Act reads:

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

In its Exhibit B-1, the carrier served notice of an intended change in the agreement. In accordance with Section 6 of the Railway Labor Act, conference was held and terminated and the employes did not within ten days of termination of conference, invoke the services of the Mediation Board, nor were such services proffered. Accordingly, ten days after termination of conferences, or on March 11, 1951, the change requested by the carrier became effective.

The effect of the change in the 1940 agreement was to remove from seniority district 3 of the maintenance of equipment department electrical workers at Burnside Shop all electrical work not under jurisdiction of the maintenance of equipment department. It has always been the responsibility and the jurisdiction of the maintenance of way and structures department on the Chicago Terminal to install and maintain all main service lines up to and including the switch at the point of entry into a building. This work has continuously been the responsibility and jurisdiction of the maintenance of way and structures department since long before the first agreement with System Federation No. 99. Any apparent conflict of jurisdiction between the electrical workers of the maintenance of way and structures department and seniority district 3 of the maintenance of equipment department electrical workers, as that seniority district existed in the 1940 agreement, was removed when seniority district 3 was changed under the procedure outlined in Rule 151 and in Section 6 of the Railway Labor Act, as evidenced by carrier's Exhibits B-1, B-2, B-3 and B-4.

When they installed conduit and switch at the paint shop, Burnside Shop. Chicago, the electrical workers covered by Section B agreement performed work covered by their classification rule (54), their seniority district rule (32) and work which was within the jurisdiction of the maintenance of way and structures department. There has been no violaton of the Section A agreement. All the claimants were employed on the claim dates and lost no work by reason of the alleged violation. There is no basis for the claim, and it should be denied.

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

The carrier and 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.

This dispute involved the right to install certain electrical equipment at the Paint Shop, Burnside Shop, Chicago, on October 15 and 16, 1951, as between electricians of the Maintenance of Equipment Department and those of the same craft in the Maintenance of Way and Structure Department. The latter did the work and members of the former are the claimants. The work consisted of installing a transformer bank adjacent to the paint shop; entrance switch inside paint shop and conduit from the transformer bank to the Square D entrance switch. They did not work past the entrance switch.

The basic Agreement was effective April 1, 1935. A supplemental understanding was negotiated under the provisions of Rule 124 on July 1, 1940, defining the seniority districts of Maintenance of Equipment Department electricians. The Organization first stands on the 1940 Memorandum.

We are therefore called upon to determine the effect of subsequent proceedings instituted by the carrier to amend the Supplemental Understanding of July 1, 1940.

The submission reflects that the carrier on February 12, 1951, served formal notice under Section 6 of the Railway Labor Act on the General Chairman of the Electrical Workers, to amend the aforesaid Supplemental Understanding. A date for conference was therein suggested. This notice was acknowledged in writing by the General Chairman who therein expressed disagreement with the carrier's proposal and suggesting that a different conference date be set. On March 1, 1951, conference was held, apparently without agreement and without plans for further conferences. Under date of March 7, 1951 the carrier wrote the General Chairman again setting forth the proposed change to be effective March 14, 1951, and after acknowledging a mutual understanding that there would be no further conferences, concluded as follows:

> ". . . therefore, the amendment in territorial scope of the roster in question will be adjusted accordingly in accordance with the procedure provided for in the Railway Labor Act as amended."

The Organization contends that the carrier never changed the territorial scope of the roster in line with its proposal as evidence by subsequent actions to the contrary.

It would appear from a study of Section 6 of the Railway Labor Act that absent agreement and in face of carrier's insistence to promulgate the Amendment as stated in its letter of March 7, 1951, the burden rested upon the Organization to request the services of the Mediation Board within ten days after the breaking off of conferences on March 1, 1951, if it desired to contest the Amendment proposed. Failing, the Amendment became effective without further action by the carrier unless the next considered point renders the amendatory procedure ineffective.

It appears that subsequent to the above there was a failure upon the part of the carrier to file a copy of the Amendment with the Mediation Board until December 3, 1954, some sixteen days after the Organization notified the carrier and the Second Division of its intention to file the instant dispute. This was long after the filing period specified by Section 5, Third (e), of the Railway Labor Act, which in part, provides:

> ". . . When any new contract is executed or change is made in an existing contract with any class or craft of its employes covering rates of pay, rules or working conditions, . . . the Carrier shall file the same with the Mediation Board within thirty days after such

new contract or change in existing contract has been executed or rates of pay, rules and working conditions have been made effective."

The substantive part of the amendatory process, we find, had been accomplished by the Organization's failure to request the services of the Mediation Board within the period specified by the Act. The provision requiring a filing of the Amendment within a thirty day period, however, is merely directory and no penalty is provided for delay or omission in complying therewith. If this were not so and the filing be considered mandatory the negligent act of a clerk or stenographer could nullify the results of mutual bargaining between the parties at some future time.

The Organization finally contends that even if the change in language of the Memorandum had been properly made, the work involved in the instant dispute would properly belong to the claimants covered by the Section A Agreement. The bare assertion is amplified upon in the Organization's rebuttal only to the extent of stating that the work performed in the paint shop was equipment placed in the shop for use of Maintenance of Equipment forces hence the work should have been performed by them.

We are not sufficiently advised by what appears in the docket to consider this final contention intelligently. Accordingly, we remand that phase of the dispute to the parties trusting that they may, in light of what we have ruled upon, resolve the matter through further conferences. Failing to do so within ninety days, we will process the case further upon receipt of written arguments confined to the said contention.

AWARD

Remanded to the parties for further handling pursuant to above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.