

Award No. 2997

Docket No. 2737

2-SP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the controlling agreement, the Carrier is improperly assigning Carmen's work to other than Carmen, thereby depriving Carmen Andy Vigil, A. Bianco and Victor Gavallos on January 5, 1956 and Carman R. Hendricks, M. Johnson, C. Hein, Clifford Busseau and Carman Helper Maurice Foley on January 9, 1956, as well as other Carmen on subsequent dates of their right to perform the work of their craft.

(2) That accordingly the Carrier be ordered to additionally compensate the aforementioned Carmen and Carman Helpers in the following manner:

(a) Carman Andy Vigil, A. Bianco and Victor Gavallos 5 hours each, at the rate of time and one-half for January 5, 1956.

(b) Carmen R. Hendricks, M. Johnson, C. Hein and Clifford Busseau and Carman Helper Maurice Foley 6 hours each, at time and one-half rate for January 9, 1956.

(c) On subsequent dates the compensation to be equally divided among qualified Carmen and Helpers available to perform the work.

EMPLOYES' STATEMENT OF FACTS: At San Francisco, California, the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the carrier) elected to assign work, recognized as carmen's work under current, controlling agreement provisions, and which work has been performed by carmen for decades and prior to inauguration of MP&C Departments' Agree-

all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, (except work generally recognized as bridge and building department work); carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; drilling, reaming, tapping and the application of studs, bolts and rivets; operating punches and shears, doing shaping and forming; operating power brake machines, work done with hand forges and heating torches in connection with carmen's work; glazing, painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand-blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in enginehouses; joint car inspectors, car inspectors, safety appliance and train car repairs; flangers, saw filers, derrick operator on relief outfit; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work and including the following classifications in shipyard: Ship carpenters, painters, joiners, caulkers, planing mill mechanics, canvasmen, riggers, steering gear riggingmen and fasteners."

Neither of those rules, it will be noticed, define the work here in dispute; they do, however, have in common the phrase "all other work generally recognized as" electricians' or carmen's work. Since as established in the facts hereinabove, the work here involved has been performed by electricians on this property since 1940, there can be no question but that within the intent of that phrase the assignment of that work to electricians on the dates of this claim was entirely proper. As carrier has stated elsewhere in this submission, Memorandum "A" (quoted above) was written specifically to provide procedures to resolve any dispute in connection with the foregoing rules and work there contemplated.

Without in any way receding from its position that the claim here under discussion is entirely unwarranted and completely lacking in merit, attention is directed to the fact that the penalty here sought is at the overtime rate of pay. This Board has in a long line of awards consistently held, with respect to penalty claims at the overtime rate of pay, that the contractual right to perform work is not the equivalent of work performed and has declined to sustain such claims.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it be denied.

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.

Both parties rely upon the portion of Memorandum "A" which provides that existing practices will be continued. They disagree as to what the practice has been and there is disagreement as to what portion of the electro-pneumatic door opener and closer was repaired.

The evidence submitted by the organization on practice is primarily a statement by carmen that they removed and installed such equipment and that until recently no department at San Francisco overhauled or repaired the units. There is no showing as to who, if anyone, repaired them recently. Since this was obviously a case of repair, not removal or installation, the evidence as to practice is insufficient to support the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.