

Award No. 4238

Docket No. 4036

2-PULL-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier improperly assigned other than Pullman Company Electrical Workers to apply freon to the air condition system on Pullman Car Virginia Beach on November 20, 1960.

2. That accordingly the carrier be ordered to compensate Electrician W. L. Taylor in the amount of a call as provided for in Rule 33.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the carrier, prior to this claim had an electrician's position working at the Florida East Coast Station, Miami, Fla., assigned to precooling and standby service of Pullman Cars arriving and departing from that station. This position protected the Florida East Coast Train No. 2. The carrier abolished this position leaving this train unprotected by a Pullman Company electrician.

On the morning of November 20, 1960, the Florida East Coast Train No. 2 had Pullman Car Virginia Beach on it. Someone other than a Pullman Company electrician was assigned to the precooling and standby service of this train, because the carrier admits that after this train was brought to the station they found that this car was in trouble and that it needed freon. To determine this, someone had to make an inspection and test of the air conditioning system. The carrier, after having someone other than a Pullman Company Electrician perform the above work, called a railroad electrician to apply freon to this car.

Under date of December 8, 1960, a claim was submitted to Foreman J. M. Keene requesting a call for Pullman Electrician W. L. Taylor, herein-

of a penalty for this sort of violation should be followed in this claim." (Emphasis inserted.)

Finally, the company wishes to call attention to the fact that the organization, apparently relying on **Rule 33**. Calls requested 2:40 hours at the rate of time and one-half in favor of Electrician Taylor. In this connection the company wishes to point out that Rule 33 is not applicable to the case at hand since it relates to work performed and that numerous awards hold that for work not performed proper adjustment is at the straight time rate (Second Division Awards 1530, 1601 and 1688).

CONCLUSION:

In this ex parte submission the company has shown that Pullman electricians do not have the exclusive right to the emergency work herein involved. Further, the company has shown that under the conditions present in the instant dispute, the company is not obligated to make penalty payment. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim of the organization is without merit and should 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.

Parties to said dispute were given due notice of hearing thereon.

It is admitted that when the trouble in the air-conditioning system was discovered a half hour before departure time a Pullman electrician was available two miles away. These circumstances do not disclose an emergency justifying the resort to an electrician in other employ.

A sustaining award is required by this record. It will be sustained at the pro rata rate which is the proper rate for time not worked.

AWARD

Claim sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.