

Award No. 4241
Docket No. 4009
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 EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when The Pullman Company in a highly questionable and illegal method removed Electrician R. A. Craine from Position No. one at Salt Lake City, Utah on May 18, 1960.

2. That accordingly The Pullman Company be ordered to compensate Electrician Craine the difference in the rate of pay he did receive, and that which he should have received as provided for in Rule No. 15 of the Agreement, at the rate of time and one half for the following days, May 18, 19, 20, 21, 22, 23, 24, and 29, 1960.

3. As there was not a reduction of forces, and Position No. one had not been abolished, Electrician Craine should also be paid at the rate of time and one half for June 1, 2, and 3, 1960 as he was working unassigned and performing services outside of bulletined hours.

4. The Pullman Company should also be ordered to re-bulletin Position No. one to read the same as the original bulletin, No. E-59-1 dated March 7, 1959.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company hereinafter referred to as the carrier, and electrician R. A. Craine hereinafter referred to as the claimant, was employed by the carrier August 1, 1935.

On March 7, 1959, Position No. one was bulletined for bid on Bulletin No. E-59-1.

improperly was abolished on June 4, 1960. Therefore, the organization has no basis for requesting that the job be re-established in all respects as it existed prior to abolishment on June 4, 1960. The company wishes to state, also, that the organization has not, and cannot, cite any rule of the agreement in support of its request that Position No. 1 be re-bulletined.

The company submits that when the organization presents a claim it assumes the obligation of presenting a clear and logical account of the facts and of citing rules which support its claim. In the instant case the organization has not assumed this responsibility. In third Division Award 4011, the Board stated, under **OPINION OF BOARD**:

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance . . ."

Also see Awards 5418, 5758, 3523, 3477 and 2577.

CONCLUSION

In this ex parte submission the company has shown that it was not required under the rules of the Agreement to assign Electrician Craine to relieve Foreman Thinnies on May 18, 19, 20, 21, 22, 23, 24, 29 and 30, 1960, and that Craine is not entitled to additional payment for service performed by him on those dates. Also, the company has shown that the Organization's claim for additional payment to Electrician Craine for June 1, 2 and 3, 1960, claim for differential payment under Rule 15, at time and one-half rate, for dates in question in May, 1960, and request that the Company be required to re-bulletin Position No. 1 as it was bulletined on March 7, 1959, are not properly before the Board. The claim 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 conceded that claims 3 and 4 were not handled on the property and therefore are not properly before the Board.

Claims 1 and 2 are that the carrier "in a highly questionable and improper method removed (claimant) from Position No. One at Salt Lake City, Utah on May 18, 1960;" and that it should therefore pay him the difference between what he received for May 18, 19, 20, 21, 22, 23, 24 and 29, and what he would have received if used to relieve the foreman on the latter's vacation and rest days.

The question is whether, by not permitting claimant to perform that relief work, carrier improperly removed him from his regular assignment.

Obviously his assignment did not entitle him to work on May 20 and 21, his rest days, and he has no possible claim with reference to those. On the other days claimant performed the normal electrician's work of his position. What he seeks here is the extra pay he would have received if instead he had been used for foreman's vacation and rest day relief.

To establish his claim that the denial of that relief work constituted his improper removal from electrician position No. 1, he must show that it was primarily a foreman's relief position, to the exclusion of electrical work during all of the foreman's absences, and that his electrical work was a minor or secondary matter.

But his regular work was electrical, and his assignment was not to foreman relief for any definite part of his regularly assigned hours, or at all. It was **electrician** position No. 1, the entire bulletin for which was as follows:

"Relieve Foreman as Leader Electrician. Inspection & repairs:
Other duties as ass'd. in Agency: Report U P Yard."

Only "normal duties" are required (Rule 42) to be stated in the bulletin. An electrician's normal duties of course concern his trade, and in the bulletin of electrician position No. 1 they are stated:— inspection, repairs, and other duties as assigned. Even the reference to relieving the foreman is not as a regular assignment, or a foreman's relief assignment, but has reference to the electrician's craft and work; it is "Relieve Foreman as **Leader Electrician**" not as a relief foreman. The indication in the bulletin was that as leader electrician the claimant might be "assigned to fill temporarily the place of a supervisor" (Rule 15) but it does not itself assign him to do so, nor constitute the predominant part, or any part, of his regular assignment, nor give him a contractual right to all special temporary foreman relief assignments, or any of them. Consequently, by not assigning claimant to the temporary work in question, the carrier did not remove him from his assignment in electrician position No. 1, nor deprive him of anything to which he was entitled as of right under either the electrician's Agreement or the bulletin.

The objection is made that the Agreement does not establish the grade of "leader electrician". But neither does the Agreement establish the relief of foremen as electricians' contractual right, even though, as in other agreements, service performed in that higher status carries the higher pay rate (Rule 15).

The fact that before and after this claim arose the carrier has used claimant as a relief foreman does not add foreman's relief to the electricians' Agreement. Unilateral practice may help interpret an ambiguous rule, but it cannot add a non-existent rule. No authority of principle has been cited under which by a bulletin the carrier either expands or constructs an agreement.

The contention is made that claimant was used so generally for foreman relief work at Salt Lake City, as to bring that work within the catch-all clause at the end of the electricians' Classification of Work Rule (Rule 5), as "all other work generally recognized as electrician's work". But special practice or recognition at one point, however long continued, is not general recognition. Furthermore, Rule 5 refers to a multitude of duties, all of which relate to electrical work, and the catch-all clause is subject to the well

established rule of *eijusdem generis*, which means, "of the same general kind." Thus, even if Pullman electricians had generally served as relief foreman, that work would not therefore be included in the phrase "other work generally recognized as electricians' work", not being itself of an electrical nature.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4241

The record in this dispute shows that ever since July 1, 1948, the effective date of the Agreement an Electrician has been by a bulletin position assigned to relieve the Foreman at the Salt Lake City Agency; and that the Electrician who held this position relieved the Foreman whenever the Foreman was off for any reason such as relief days, illness, vacation, etc., and paid in accord with Rule 15.

This practice continued until May 18, 1960, when the Claimant who held the position, with the assignment to relieve the Foreman was removed from his bulletined duties of relieving the Foreman, at Salt Lake City Agency, who was on vacation. The Carrier after removing the Claimant from this assignment assigned some one other than the Claimant to relieve the Foreman on May 18, 19, 20, 21, 22, 23, 24, 29 and 30, 1960. The record shows that this is the only time since the effective date of the Agreement that any one other than the Electrician, holding the position that calls for the relief of the Foreman, was assigned to relieve the Foreman.

Therefore, the Carrier did violate the current Agreement when they removed the Claimant from his normal duties of relieving the Foreman and assigning these duties to some one else, this Award should have been in the affirmative.

We dissent.

E. J. McDermott

T. E. Losey

C. E. Bagwell

R. E. Stenzinger

James B. Zink