

**Award No. 4247**  
**2-AT&SF-EW-'63**  
**Docket No. 4207**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
(Western Lines)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the provisions of the current agreement, Division Lineman, R. H. Hendon, who is an Electrical Worker of the Communications Department, was unjustly dealt with and the provisions of the Current Agreement were violated when the carrier assigned others than Communications Department Electrical Workers to install Communications equipment at Las Animas, Colorado.

2. That accordingly, the carrier be ordered to compensate Mr. R. H. Hendon, as follows: one and one-half (1½) times his regular rate of pay for fifty (50) hours.

**EMPLOYEES' STATEMENT OF FACTS:** Communications Department Electrical Workers, Division Lineman, R. H. Hendon, hereinafter referred to as the claimant, is a monthly rated employe regularly employed by the Atchison, Topeka and Santa Fe Railway System, Western Lines, hereinafter referred to as the carrier in their communications department as a division lineman.

The claimant is one of a number of communication department electrical workers, employed by this carrier as a division lineman to install, maintain, repair and clear trouble on all communications equipment within a specific territory assigned to these division linemen, such as the claimant.

Communication department electrical workers division linemen, such as the claimant, have a work week of Monday thru Friday, Saturday and Sunday rest days, except Saturday, these division linemen, such as the

phones" as an integral part of those installations without prior protest or complaint from its electricians or their representative organization, the International Brotherhood of Electrical Workers, until May 18, 1960, when a similar claim was filed on carrier's Coast Lines, as mentioned hereinabove, who cannot now be heard to protest ignorance of a practice so long and so firmly established. The carrier further states that its practice is in full accord with the principles firmly established by prior awards of this and other Divisions of the National Railroad Adjustment Board.

The only rule cited by the employees in support of their claim in the instant dispute is Rule 119 of the General Shop Crafts' Agreement effective August 1, 1945, which is quoted in the carrier's statement of facts. This rule may be searched in vain for any indication that it purports to allocate to employees of the communications department the work of installing and maintaining signal systems such as the CTC (TCS) system herein involved, which work is reserved to this carrier's signal department employees by the scope rule of their agreement and has been customarily and traditionally performed by those employees since the first CTC system was installed on the carrier's property in 1931.

Without prejudice to its position as previously stated that the instant claim should either be dismissed, remanded or denied, the carrier further asserts that the penalty payment of fifty (50) hours at punitive time and one-half rate as contemplated by Item 2 of the employees' claim, is excessive. The signalmen who installed the phones involved actually consumed a total of only thirteen and one-half (13½) hours in performing the work. General Chairman McLennan, in the fourth paragraph of his letter of March 3, 1961, to carrier's Assistant to Vice President L. D. Comer claims that "This installation time was arrived at by the Santa Fe people whose duty it is to make estimates of phone installations and their findings determine that 50 hours is a fair estimate of the total time necessary for these installations." As stated in Mr. Comer's letter of April 19, 1961, (quoted on pages 8 and 9 of this submission) carrier's records show that six phones were installed on this territory, consuming a total of thirteen and one-half hours and there was no necessity to estimate the time involved. Further the organization has not identified the men who made the estimate or established their qualifications to make such estimates.

The carrier further asserts that the employees' claim is excessive in that it seeks payment at the time and one-half rate of pay contrary to the well known and firmly established principle of this and other Divisions of the National Railroad Adjustment Board that the proper compensation for work not performed is the pro rata rate.

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In conclusion, the carrier states that the employees' claim in the instant dispute should be either dismissed or denied for the reasons expressed herein.

The carrier is uninformed as to the arguments the brotherhood may advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the brotherhood in this dispute.

**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.

This claim involves the same parties, (other than individual claimants), Rules and substantially the same facts as were before this Board in Award No. 4157 (Docket No. 4031), and Award No. 4246 (Docket No. 4206). On the authority of said Awards the claim must be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1963.