

Award No. 4248
Docket No. 4214
2-CMStP&P-EW-'63

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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, St. PAUL & PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the carrier furloughed Electrician Helpers W. G. Rhodes and J. C. Richey October 3, 1960.

2. That Electrician Helpers W. G. Rhodes and J. C. Richey were employed as cooks on the substation camp car equipment and classified on the seniority roster as Electrician Helpers.

3. That accordingly the Carrier be ordered to compensate Electrician Helpers W. G. Rhodes and J. C. Richey for all time lost at the straight time rate of pay from October 3, 1960, until they are returned to service.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 3, 1960, also prior to September 1, 1949, the carrier employed cooks on the substation camp boarding cars to prepare meals for the substation maintenance crews. W. G. Rhodes and J. C. Richey, hereinafter referred to as the claimants, were hired solely as cooks to perform this service.

Prior to the year 1945, the cooks were furnished by the Olympic Commissary Company of Seattle, Washington, on a contractual basis and because of complaints regarding the quality and preparation of food that was served by the Olympic Commissary Company, the carrier then began to maintain the camp car boarding cars and furnish cooks. The cooks were paid the helpers rate of pay.

With specific regard to Claimants Rhodes and Richey, while they may or may not have performed part time cooking in their respective substation maintenance crews prior to October 3, 1960, yet that fact is immaterial because the fact remains that they hold seniority as electricians helpers only and, prior to October 3, 1960, performed service as electrician helpers and occupied electrician helper positions which could and were, effective October 3, 1960, properly abolished in accordance with Rule 22.

Subsequent to October 3, 1960, any cooking performed in the crews in which Claimants Rhodes and Richey formerly occupied electrician helper positions is performed in the same manner as it was prior to October 3, 1960 except that it is performed, on the same part time basis, by electricians instead of by electricians and/or electrician helpers. Of course, electricians come within the scope of the electrical workers agreement just as do electrician helpers.

It should perhaps be pointed out that cooks, as such, i.e., cooks who perform full time cooking duties and cooking duties only and are classified and paid as cooks, are furnished in some instances and under certain circumstances to trolley maintenance crews and it may be that by the instant claim the employees are attempting to extend this to substation maintenance crews and that being so, then any such attempt must fail because there is no schedule rule or agreement which provides that cooks, as such, must be furnished when it has not been the practice to do so in the past.

The carrier submits it has been conclusively shown that there has been no past practice of furnishing cooks, as such, when employees in substation maintenance crews are required to use boarding cars and, therefore, Rule 28, fifth paragraph, is not now and never has been applicable to such substation maintenance crews in view of which it is readily apparent that the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and the carrier submits that your Board is not empowered to write new rules or write new provisions into existing rules.

It is the carrier's position that the abolishment of the two electrician helper positions occupied by Claimants Rhodes and Richey in no way violated Rule 28 or any other rule of the currently effective electrical workers agreement in view of which there is absolutely no basis for the instant claim and we respectfully request 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 employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

This dispute grows out of the action of the carrier in discontinuing two electrician-helper positions occupied by the claimants, who had served as cooks on sub-station camp car equipment. The positions were abolished

as of October 3, 1960, and on January 8, 1961, (more than 60 days later) the Employees undertook to assert a claim, contending that the carrier's action violated that part of Rule 28 which provides, in part, that the "practice of furnishing cooks . . . shall be continued", etc.

Assuming, for the purposes of these findings, that the claim was sufficient in form and substance, it is nevertheless apparent that it was asserted too late, unless the delay was waived by the carrier or the claim was one of a continuing character. See Article V of the August 21, 1954 Agreement, effective January 1, 1955.

First, as to waiver, we find that the claim was initiated by a letter from the Local Chairman to the Substation Foreman, dated January 8, 1961, and that it was declined by the General Foreman Substations in writing on January 19. It was subsequently progressed to the Assistant to the Vice President who, on May 16, 1961, declined it on the specific grounds that it was not submitted to the Carrier within 60 days from the occurrence on which it was predicated. The Assistant to the Vice President further asserted in said letter that the claim did not involve a "continuing claim". On this state of the record the Employees' contention that the time limit rule was waived cannot be sustained.

That we do not have a continuing claim is likewise apparent. The claim was for the reestablishment of abolished positions—not on account of the positions having been improperly filled. Whatever rights the claimants may have had became determinable and fixed when the positions they occupied were discontinued. The circumstances under which a claim may be regarded as continuing were fully and succinctly considered in Award No. 17 of Special Board of Adjustment No. 313 and no good purpose would be served by again laboring that subject. The claim was not a continuing one.

The Employees have failed to discharge the burden of proof.

AWARD

Claim dismissed.

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.