

Award No. 4430
Docket No. 4369
2-NYNH&H-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the current agreement was violated on November 12, 1961 when an employe other than an electrical worker performed work in the General Office Building at New Haven, Conn.

2. That accordingly the Carrier be ordered to compensate Electrician J. J. Fruin in the amount of four (4) hours at the applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Electrical Worker J. J. Fruin, hereinafter referred to as the Claimant is employed by the New York, New Haven and Hartford Railroad Co., hereinafter referred to as the Carrier, in the Mechanical Department and assigned to General Foreman C. Richards, in the New Haven District (Electrical Department) of the Maintenance of Way Department.

Claimant is regularly assigned as an Electrician and qualified to perform electrical work on all of Carrier's facilities in the Maintenance of Way Department.

On November 12, 1961, a clerk employed in the duplicating bureau removed a light switch from the wall leaving the exposed wires in a dangerous condition and applied the switch to an addressograph machine.

The performance of said electrical work by an employe other than an electrical worker is a violation of the controlling agreement and is so conceded by the carrier as evidenced by the following letter:

"New Haven, Connecticut
March 19, 1962

"Mr. A. J. DeRitis, General Chairman
International Brotherhood of Electrical Workers
1920 Haight Ave.
Bronx 61, New York

"Dear Mr. DeRitis:

"This will refer to your letter of January 25, 1962, and our

acts performed by an employe outside the scope of his employment, your Board held:

"... the fireman, without any request started to do the welding. How long or how much is not made known. However, the work performed by the fireman was for his own pleasure and not as an employe of the carrier . . ."

In the instant case the maintenance of the off-set press in the central duplicating bureau is the subject of a maintenance contract with the manufacturer. Our electricians have no contract right to repair this equipment nor has it been the practice to have them do so. The repair to this machine should have been performed by the manufacturer, for which services the carrier had paid in advance.

We point out that neither the manufacturer nor the carrier's electrician would have repaired this machine by removing a switch from the wall and installing it in the machine. Thus, the work was not work the carrier would have had performed.

While the work of removing or installing wiring in buildings is the work of electricians, we respectfully request your Board to find that in the instant case the carrier did violate the agreement when and because a clerk, without the authority from, or knowledge and consent of the carrier, removed said switch. The claim 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 waived right of appearance at hearing thereon.

On November 12, 1961, at around 8:00 P.M., a clerk employed in the Duplicating Bureau removed a light switch from the wall and applied the switch to an addressograph machine. The electrical wires that were attached to the switch were left exposed. The following morning a maintenance electrician was called to repair the wall wiring and install a wall switch.

The Organization filed a claim for four hours pay on behalf of Mr. J. J. Fruin, a regularly assigned electrician working, at that time, out of the Maintenance of Way Department.

The Organization contends that the Carrier violated Rule 29 of the controlling Agreement.

The Carrier concedes that "the removal and/or installation of electrical wall switches is the work of electricians." However, it is the Carrier's position that:

- 1) "it is not responsible for, or the insurer against, the unauthorized acts of its employes":

2) the "technical violation" of the Agreement "is not such that requires the payment of the requested penalty";

3) this case "constitutes a recognized exception" to Rule 29.

The record reveals the following undisputed facts;

1) there was no supervisor on duty at the time the clerk removed the wall switch;

2) that "when the clerk performed electrician's work, he did so without the knowledge or consent of the carrier";

3) that "when the incident came to the attention of the supervisor the following day, a maintenance electrician was called to repair the wall wiring and install the wall switch";

In Third Division Award 6329, the Board in denying the claim, held in part—that:

"The removal of the walkway and guardrail was done by others without the knowledge or consent of the Respondent and was not work that was essential to the Carrier in the conduct of its business."

We believe the reasoning set forth above is sound and controlling in the present case.

We also believe that this case is factually different and readily distinguishable from Second Division Award 1622. In the latter case, one electrical craft trespassed upon the work assignments and the contractual rights of another electrical craft. Each craft had a different employer and its own Labor Agreement. Furthermore, the trespassing craft knew that the work involved did not come within the scope of its Agreement.

In the instant case, the clerk performed a wrongful and destructive act which the Carrier did not authorize—had no knowledge of and could exercise no control.

In keeping with the facts and reasoning set forth above the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of Feb., 1964.