

Award No. 4490
Docket No. 4474
2-CMS&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when 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 Chicago, Milwaukee, St. Paul & Pacific Railroad Company hereinafter referred to as the Carrier, violated the provisions of Rule 26 of the current agreement, effective September 1, 1949, between the Carrier and the International Brotherhood of Electrical Workers (System Federation No. 76, Railway Employees' Department, AFofL Mechanical Section Thereof) covering sub-station operators in the electrified territory, Harlowton to Avery and Othello to Tacoma, when they assigned sub-station Maintenance Foreman J. G. Yencopal to open "Highline Signal Disconnect Switches" on March 9, 1962, at the Cedar Falls, Washington sub-station.
2. That sub-station operator A. W. Kuehny, hereinafter referred to as the claimant, be paid two (2) hours at the time and one-half rate of pay in accordance with the provisions of Rule 5 (d) of the aforementioned agreement.

EMPLOYEES' STATEMENT OF FACTS: On the morning of March 9, 1962, a line crew was assigned to patrol the tracks west of Cedar Falls, Washington, due to a heavy fall of wet snow. At the same time a section crew was traveling east from Maple Valley, Washington, which is approximately 17 miles west of Cedar Falls, Washington.

Shortly after the line crew left Cedar Falls, a member of the section crew called in and reported a tree down on the trolley, about 1½ miles west of Barnestown, Washington, which is approximately 5 miles west of Cedar Falls.

no "penalty" claims have been filed which clearly indicates that by this claim the employes now seek to change the application of the rules, which have existed over the years, to produce, by board awards, a penalty in an emergency situation not contemplated by, or provided in the rules.

That sub-station maintenance foremen do, and always have operated the switches in the sub-stations is admitted by Claimant Kuehny.

The carrier submits that it is readily apparent that by the instant claim the employes 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 in this regard we would point out that it has been conclusively held by the Second Division, as well as by the other three divisions and the various Special Boards of Adjustment, that your board is not empowered to write new rules or to write new provisions into existing rules.

The carrier further submits that the instant claim is in no way supported by schedule rules or agreements and we respectfully request that the claim 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.

The Division finds no merit in the claim because of the two following reasons: the circumstances giving rise to the claim warranted the action of the Foreman in complying with the instructions of the Load Dispatcher; and secondly there is a grave question as to whether the protested action comes within the purview of Rule 26.

Upon reviewing the entire record, the Division finds that the Foreman's action in disconnecting the signal system in order to attract the attention of the line crew, upon being informed that there was a tree down on the trolley wires, must be viewed or measured as to whether it was a necessary and reasonable thing to do at the time that it was done, and not whether it was a reasonable or prudent action as viewed by the hindsight test. In view of the unchallenged testimony that other than scheduled trains and conveyances may and do operate over the tracks in question, it does not appear unreasonable for supervision to have instituted measures to inform the line crew and alerted them to be available to clear the track.

Secondly the Division finds that the language of Rule 26 that the duties of the claimant,

" * * * shall include the operation of machinery and switching apparatus for the control and distribution of power * * * "

were not applicable to, and invaded by, the actions of the Foreman. It would seem from a reading of the pertinent language that when a disconnect switch is pulled to cut off the functioning of the signal equipment, it does not constitute operating machinery for the control and distribution of power. The act was directly related to and connected with the temporary cessation of signal line functioning and had nothing to do with the normal and usual duties of the claimant pertaining to carrying on functions directly related to making sure that the normal power needs of the electrified portion of the road were being maintained and met.

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 March, 1964.