

Award No. 5508

Docket No. 5262

2-NP-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Northern Pacific Railway Company violated the provisions of the current agreement with System Federation No. 7 in behalf of the International Brotherhood of Electrical Workers, covering their employes in the Communications Department, when they assigned the work of replacing radio equipment in cabooses at Centralia, Washington Roundhouse, to working Supervisors, or Assistants, on December 4, 24, and 29, 1964.

2. That accordingly, the Carrier be ordered to compensate A. G. Hochban, Communication Maintainer, in the amount of four (4) hours for each of these dates at the straight time rate, a total of 12 hours, which includes travel time.

EMPLOYEES' STATEMENT OF FACTS: A. G. Hochban, hereinafter referred to as the Claimant, is employed by the Northern Pacific Railway Company, hereinafter referred to as the Carrier, as a Communication Maintainer.

He has system seniority rather than point seniority. The claimant is headquartered at Auburn, Washington, and has as his territory and work assignment the following:

“All Communication Equipment — Auburn and Auburn Yard Limits
— All Radio Equipment, Yakima and West, including Passenger Train
Communication Equipment where required.”

The Claimant is monthly rated, paid for “all services rendered” six days per week, Saturday is his standby day and Sunday his rest day.

The Claimant has as part of his territory the point in question, Centralia, Washington, approximately 50 miles south of Auburn, Washington, his headquarters.

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.

Petitioner contends that Carrier's assignment of a working supervisor to replace radios in three cabooses at Centralia, Washington on the specified dates of claim violated Rule 3 of the regular Agreement and a Memorandum of Agreement between the parties, both dated September 29, 1954. Claimant, a Communication Maintainer who is regularly assigned to a territory which includes Centralia, Washington, seeks four hours' compensation at the straight time rate for each claim date.

Petitioner asserts that the disputed assignments constitute direct violations of the Memorandum of Agreement dated September 29, 1954 which allegedly reserves exclusively such work to available Communication Department Maintainers and repairmen as well as Mechanical Department electricians. Furthermore, Petitioner contends that the disputed work is covered by the Scope Rule of the regular Agreement, and that the following note in Rule 3 also was violated through Carrier's action:

"None but employes included within the scope of this agreement will perform the work specified in this Rule 3, except that supervisory officers of the Communications Department may perform work covered by this agreement incident to their supervisory duties."

Carrier avers that working supervisors have changed radio sets in cabooses at Centralia since 1960 without prior objection by Petitioner as there are no Communication Department maintainers and repairmen of Mechanical Department electricians employed at that point or location. Furthermore, Carrier contends that this established practice is in accord with Article III of the September 25, 1964 Mechanics Agreement covering the assignment of work and use of supervisory employes to perform Mechanics' work, the pertinent part of which reads as follows:

"ARTICLE III.

ASSIGNMENT OF WORK - USE OF SUPERVISORS

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foreman at points where no mechanics are employed. . . ."

Both the regular Agreement between the parties and the Memorandum of Agreement involved in this dispute are dated September 29, 1954. Rule 3(j) of the regular Agreement classifies the work of positions specified therein such as the work of a communications maintainer, but no reference is found to a change out of radios on rolling stock, the particular work here in dispute.

The applicable agreement in this case is the Memorandum of Agreement dated September 29, 1954 which contains special rules pertaining to installing and removing radio communication equipment.

The pertinent provisions of said Memorandum of Agreement clearly provide that the work of installing, maintaining, removing and repairing radio communication equipment will be allocated to Communication Department maintainers and repairmen and the Mechanical Department electricians; that available employees in either Department may remove and install radio communications transmitter — receiving units on rolling stock; and that when employees of either department are not employed at the point where the work is required, employees in the other department may perform the necessary work.

In the instant case, no Mechanical Department electricians were employed at Centralia and the Claimant was stationed at Auburn, approximately fifty (50) miles distant from Centralia. Hence, Carrier contends that there were no available employees in either department at the particular point where the disputed work was performed, and that it was proper to use a working supervisor regularly assigned at Centralia to change out radios on cabooses pursuant to past practice and Article III of the September 25, 1964 Agreement.

Although we find merit in Petitioner's contention that prior acquiescence does not abrogate existing rights under the Memorandum of Agreement dated September 29, 1954, Petitioner has failed to establish that Claimant was employed at the particular point where the work was required on the dates of claim. Even though Centralia, Washington is within the Claimant's assigned territory, we are unable to determine that his commitment to work at various locations throughout such territory constitutes employment or availability at the particular point where disputed work was required. The word "point" connotes a particular place having a definite position such as a geographic location, but not a geographic area encompassing a number of communities. Petitioner has offered no evidence to support its assertion that Claimant's territory constitutes a "point" within the context of paragraph 4 of said Memorandum of Agreement or Article III of the Mechanics' Agreement of September 25, 1964. Consequently, we must conclude that Petitioner has not met its burden of proof as to an essential premise on which the instant claim is bottomed. See Awards 3527 and 5168. Therefore, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1968.

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