



Award No. 5792

Docket No. 5630

2-WM-EW- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Electrical Workers)**

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Western Maryland Railway Company violated the provisions of the current working agreement between the Carrier and System Federation No. 30, particularly Rule 84 and 85 of the controlling agreement. That employees other than electrical workers were assigned to perform work, digging and back-filling trenches utilized for underground cables, repairs and installation.
2. That accordingly, the Western Maryland Railway Company, be ordered to compensate Electrician E. V. Stalnaker for two eight (8) hour' days at the pro rata rate as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: The Western Maryland Railway Company, hereinafter referred to as the carrier, operates a terminal at Elkins, West Virginia, which embraces a locomotive and car repair facility in addition to the customary fixed property installations necessary to the efficient operation of the carrier.

On June 21, 1966 a power failure occurred when a 480 volt underground feed cable, supplying current for receptacles primarily used for welding machines, became defective, tripping the protective device commonly known as a circuit breaker.

On June 21 and 23, 1966, engine serviceman was called out on overtime to dig up the defective cable.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer, all of whom declined to make satisfactory adjustment.

The agreement effective January 1, 1947, as subsequently amended is controlling.

POSITION OF EMPLOYEES: Rule 27 of the controlling agreement, reading in pertinent part:

"INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS

Local No. 410 of Elkins, W.Va.
Aug. 24, 1966

Mr. Harry Howell
General Foreman
Western Maryland Rwy.
Elkins, West Virginia

Dear Sir:

It has been brought to my attention that the Electrical craft here at Elkins wish to claim the digging of the underground conduit ditches.

The laborers here at Elkins shop have dug these ditches and other unskilled work of laborers for the past thirty years.

Therefore, we protest any change of this unskilled work to any craft under the provisions of the Firemen & Oilers agreement, appendix "A" and the Shop Craft Agreement, Appendix "B", Section 4:

'The carrier will not take work from one craft and give it to another, until it is so arranged under the provisions of said jurisdictional agreement. Effective February 15, 1940.'

Very truly yours,

/s/ R. J. MALCOLM,
Local Secretary & Chairman"

As further evidence that the work complained of is not exclusive to electrical workers there are affidavits from H. Howell, General Foreman and R. B. Martin, Assistant Master Mechanic.

Again referring to Award 2223, it was held as follows:

"The organization argues that the making of a sequence test is electricians' work. The record shows that a sequence test consists of opening the throttle to see if the engines respond. It likewise requires no special skill or training.

The record further shows that the work involved in this dispute has been performed by employes of many crafts for many years without complaint by the electricians. We think the practice has been to have this work performed as incidental work of several crafts, and that it is not the exclusive work of electricians."

The carrier respectfully submits that the claim herein made is not supported by rules of the agreement, past practice on the property and awards of the National Railroad Adjustment Board.

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 Employes object to the Carrier's submission of a copy of a letter from the Local Secretary and Chairman of the Firemen and Oilers Organization to the General Chairman of the Electrical Workers as not having been produced and furnished the Employes during the handling of the dispute on the property. They also object to our consideration of Carrier's Exhibits "A" and "B" on the same grounds. Under the provisions of the Railway Labor Act and the regulations of this Board documentary evidence not produced and considered by the parties during the progression of the claim on the property may not be introduced for the first time at this level of appeal. Accordingly, the objection of the Employees is sustained.

On the merits, it appears to the Board that the work of digging a trench to uncover electrical cable and the back filling of that trench after the cable had been repaired by an electrician is work strictly pertaining to "... maintaining, repairing, rebuilding . . ." underground cable and conduit. As such it necessarily falls within the scope of work classified and reserved by Rules 84 and 85 of the basic Agreement to Electrical Workers (Electricians). Accordingly, the claim is valid and will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1969.