



Award No. 5891

Docket No. 5841

2-IC-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99,
RAILWAY EMPLOYEES' DEPARTMENT, A.F.L.-C.I.O.
(ELECTRICAL WORKERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: Claim of Employees:

1. That the Carrier violated the current agreement on April 27th and 28th, 1968, on its Southern Lines, when it allowed other than Electrical Workers (Section Linemen) to inspect and maintain Standard Clocks.
2. That the Carrier be ordered to additionally compensate Section Linemen W. D. Bell, G. L. Wiltshire and C. E. Richards for eight (8) hours each at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Instructions have been put out by the Illinois Central Railroad Company, herein referred to as the carrier, which designated the points where standard clocks are located and which section lineman is responsible for the inspection, maintenance and repairing of these clocks. This notice of instructions was dated April 28, 1960 and had the heading "STANDARD CLOCKS IN SERVICE OWNED BY ILLINOIS CENTRAL AND MAINTAINED BY SECTION LINEMEN ON SOUTHERN LINES".

Section Linemen use a special key in the setting of these clocks.

On April 28, 1968, other than section lineman W. D. Bell, hereinafter referred to as one of the claimants, inspected and made adjustments to the standard clocks at Frogmore and Jackson, Tennessee. On April 27, 1968, other than section lineman G. L. Wiltshire, hereinafter referred to as one of the claimants, inspected and made adjustments to the standard clocks at Meridian, Mississippi. On April 28, 1968, other than section lineman C. E. Richards, hereinafter referred to as one of the claimants, inspected and made adjustments to the standard clocks at the Cherry Street Station XN Telegraph Office, Freight Yard and Roundhouse Office Freight Yard, Vicksburg, Mississippi.

Claimants are employed by the carrier as section linemen on its Southern Lines and hold seniority under rule 32 and perform work coming under rule 54 of the schedule of rules effective April 1, 1935, as subsequently amended.

The brotherhood has produced no probative evidence that concessions of this nature have been made and has failed to establish a valid claim.

C. The Monetary Claim

The claimants suffered no loss because other than electricians performed the simple everyday task of advancing the clock one hour. Yet they are claiming eight hours each at the pro rata rate, because they were not assigned to this work. Surely, they are not suggesting that it would take eight hours to perform this simple task. More likely, the claim represents a penalty for the alleged violation of the rule.

A penalty cannot be awarded in the absence of a penalty rule. This is a firmly established principle of contract interpretation and the members of your Board have cited it on numerous occasions. In Second Division Award 1638, you held that in the absence of a penalty rule, an employee who has been adversely affected by a violation of the agreement is entitled to be made whole, nothing more:

"The foregoing making the employee whole is in conformity with the common law rule. It is accord with the rulings of the state courts of the country. And, lastly, the Supreme Court of the United States recognizes the rule. See Republic Steel Corp. v. Labor Board, 311 U.S. 7; National Labor Relations Board v. Seven-up Bottling Co.; 73 S. ct. 287. Making the employee whole simply means he shall suffer no loss . . . This conforms to the rule that the employee should be made whole and, at the same time, eliminates punitive damages which are not favored in law. It conforms to the legal holding that the purposes of the Board are remedial and not punitive; that its purpose is to enforce agreements as made and does not include the assessing of penalties in accordance with its own notions to secure what it may conceive to be adequate deterrents against future violations."

See also Second Division Awards 3672, 4086.

CONCLUSION: The company has shown that the claims of the organization are completely lacking in merit and without foundation under the current agreement. No rule grants electricians exclusive right to move the minute hand on electric clocks. The company asks the Board to affirm the company's position by denying the claim in its entirety.

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.

The issue involved herein is whether or not Carrier violated the Agreement when it permitted employees other than electricians to advance the hour hands of Standard Clocks at various Carrier locations in order to conform to Daylight Savings Time.

The Organization relies on Rules 33 and 54 as being violated herein, the pertinent parts of said rules providing as follows:

"Rule 33. None but mechanics regularly employed as such shall do mechanics' work as per special rules * * * * *.

"Rule 54. Electricians' work shall consist of maintaining, repairing, rebuilding, inspection and installing the electric wiring of * * * * * all inside telegraph and telephone equipment, electric clocks * * * * *, and other work properly recognized as electrician's work."

The Organization's position is that the work in question has always been performed by Claimants since the inception of the Agreement on April 1, 1935 to April 1968; that just because the railroads adopted Daylight Savings Time, Carrier does not have the right to take said work which has always been performed by the electrical workers and assign it to other than electrical workers covered by Rule 54.

Carrier contends that electrical workers do not have an exclusive right to the work here consisting of moving the minute hand with the index finger because it is not included in the classification of work rules; that it was not the intent of the parties to include this non-electrical skill activity as exclusively electricians' work; that on occasions in the past employes of other crafts and supervisors have advanced the hands on these Standard Clocks; that inasmuch as Jackson does not have a section lineman position, Claimant Bell herein would be required to travel 100 miles round trip from Dyersburg, Tennessee to Jackson, Tennessee in order to advance the clocks at 2:01 A.M.

Rule 54 does not in our opinion reserve exclusively to Claimants the work here in question. Said rule refers to the "maintenance and repair" of the "electric wiring" of electric clocks. Nothing in this instance was performed that included the maintenance and repair of the electric wiring of the clocks in question. No breakdown or erratic behavior of the clocks was involved herein necessitating any repair work. The work in question concerned the simple act of moving a hand of the clocks with a finger. A simple act, permitting an unskilled employe to perform the work, does not in our opinion amount to maintenance or repair so as to bring said work within the scope rule as contemplated by the parties herein and thus give Claimants the exclusive right to the work in question.

In regard to past practice, Claimants failed in this instance to prove by competent substantive evidence that they have always performed the work involved herein. Carrier on the property refuted this assertion and submitted exhibits where claims had been previously denied concerning the same work as in this dispute and also asserting that office employes, operators, clerks, and dispatchers had set the Standard clocks in 1967 and 1968. Mere allegation without substantive proof is of no probative value.

For the aforesaid reasons, we are compelled to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST E. A. Killeen
Executive Secretary

Dated at Chicago Illinois, this 17th day of April, 1970.

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