

Award No. 5980

Docket No. 5719

2-MP-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement on Tuesday, June 27, 1967 and Wednesday, June 28, 1967, when Supervisor Highfill encroached upon the duties of the Telephone Maintainers when as the result of a trouble call, made repairs to the telephone lines between Kansas City, Missouri and Leavenworth, Kansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Telephone Maintainer, W. E. Hamilton in the amount of four (4) hours each day at the pro rata rate for June 27, 1967 and June 28, 1967 as provided in the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. E. Hamilton, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a Telephone Maintainer at Kansas City, Missouri and is compensated in line with Rule 107(c), reading in pertinent part:

“(c) Western and Southern Districts only. Telephone maintainers will be paid a monthly rate to cover all services rendered.”
(Emphasis ours.)

On Tuesday, June 27, 1967 between the hours of 8:00 A. M. and 12:00 Noon and again on Wednesday, June 28, 1967, between the hours of 6:00 P. M. and 9:45 P. M. Supervisor Highfill encroached upon the duties of telephone maintainers when he took it on himself to repair trouble on the telephone lines between Kansas City, Missouri and Leavenworth, Kansas, disregarding the facts that the carrier employs a crew of telephone maintainers at Kansas City and that the carrier employed Mr. Highfill as a supervisor to supervise these telephone maintainers.

Your Board considered a claim from telephone maintainers in Kansas City in Award 4086 in which the claims were declined. In that case, the supervisor in the exercise of his duties performed certain work which the Employees alleged was assigned to telephone maintainers exclusively. In declining the claim, your Board stated in part:

"Under Rule 26 foremen are not prohibited from performing work in the exercise of their duties. Consequently, in order to establish their improper performance of the work of a craft it must be shown not to have been done in the exercise of their duties."

In this case, the employes have not shown nor have they even argued that the foreman did more than perform work in the exercise of his duties. It is not sufficient simply to argue that a telephone maintainer could have been used to perform the work.

In the same award, your Board also pointed out that telephone maintainers receive a monthly salary to cover all services rendered including overtime on the first five days of the work week and sustain no financial loss. The same is true here. As stated by your Board:

"Telephone maintainers receive a monthly salary to cover all services rendered, including overtime on the first five days of the work week. All the work in question was done on those days, one item at Midnight and the others at times not stated. Each claimant worked and was paid for the day to which his part of the claim relates, so that he can have sustained no financial loss. There is no contention that the circumstances were such on any of the six occasions that an additional telephone maintainer would have been necessary if the supervisor had not performed the item of work claimed, and no claim is presented by such other telephone maintainer. The claims must be denied."

Just as your Board came to the conclusion that the claims in Award 4086 must be denied, we believe your Board will come to the same conclusion in considering the dispute before your Board in this docket and deny the claim.

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.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

A dispatchers circuit and a messenger circuit, carried by a Western Union pole line, is utilized by Carrier between Kansas City and Omaha, Nebraska. By contract between Carrier and Western Union the pole line and circuits were maintained by Western Union.

About 8:00 P. M. on June 27, 1967, the dispatcher's circuit became noisy. Supervisor Highfill at Kansas City, working with the wire chief at Atchison (an intermediate point) patched the dispatcher's line to the message circuit; the dispatcher's line was made inoperative. The following day, June 28, 1967, the lineman employe of Western Union assigned to maintenance of the pole line being absent, Supervisor Highfill drove north from Kansas City and found a Western Union line wrapped around the dispatcher's circuit. He tied it into the clear, thus correcting the trouble.

Claimant was employed by Carrier at all times material herein, as a Telephone Maintainer at Kansas City, Missouri. In paragraph 1 of the claim filed in his behalf it is alleged that the activities of the Supervisor on June 27 and 28 detailed supra, "made repairs to the telephone lines between Kansas City, Missouri and Leavenworth, Kansas," in violation of the Agreement.

The Supervisor's participation in the patching on June 27 was not repairs to telephone lines. We therefore, must dismiss the claim as it relates to that date.

As to the complained of activities of the Supervisor on June 28, we find that no provision of the Agreement specifically vests Telephone Maintainers with any right to lineman's work. Therefore, to prevail, Petitioner had the burden of proving, by evidence of probative value, that under like circumstances the work involved had historically been exclusively performed by employes in the classification of Telephone Maintainers. In the record made on the property Petitioner failed to satisfy the burden. Consequently, we are compelled to dismiss the claim for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1970.