

Award No. 6042**Docket No. 5868****2-PULL-EW-'70****NATIONAL RAILROAD ADJUSTMENT BOARD****SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L. — C. I. O. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Pullman Company violated the current agreement when it abolished Position #1 of electrician in B&O Yard with regular bulletined hours of 8:00 A. M. to 4:30 P. M. Monday through Friday with relief days Saturday and Sunday, and on August 30, 1968 posted Position #1 Electrician — 7 days per week 9:00 A. M. to 12:00 Noon, 1:00 P. M. to 4:00 P. M., no rest days. A split shift effective September 9, 1968.

2. That Electrician P. L. Banks be assigned to Position EL-3 Position #1 with working hours 8:00 A. M. to 4:30 P. M., Monday through Friday with relief days Saturday and Sunday.

3. That Electrician P. L. Banks be compensated at the pro rata rate of pay for all time that he is prevented from working hours 8:00 A. M. to 4:30 P. M. on each Monday, Tuesday, Wednesday, Thursday and Friday and time and one-half rate for all service performed on his relief days Saturday and Sunday.

4. That Electrician A. Smith be recalled from furlough and assigned to Position #2 with working days Thursday, Friday, Saturday, Sunday and Monday. That A. Smith be compensated at the pro-rata rate for all time that he has been prevented from working hours 8:00 A. M. to 4:30 P. M. on each Thursday, Friday, Saturday, Sunday and Monday and at time and one-half for service performed outside of these hours on his relief days, Tuesday and Wednesday.

5. That Electrician E. Branch, vacation relief worker, be compensated for all time that he did not work in Electrician A. Smith's place while Smith was on vacation. Electrician E. Branch was furloughed on September 9, 1968 as a result of this violation.

The claim is without merit and should be denied, if not dismissed for lack of jurisdiction.

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.

This dispute arises out of the fact that EL-3 Positions No. 1 and 2 (Electricians positions) were abolished effective September 9, 1968. There is no contention of the Organization of improper notice. The Organization contends that the abolishment of these two positions was in violation of Rule 21 of the Agreement of July 1, 1948, as subsequently amended. The pertinent part of Rule 21 is as follows:

"RULE 21. HOURS OF SERVICE. (a) For Electrical Workers in Districts and Agencies. The bulletined hours of service for employees in districts and agencies shall be 8 consecutive hours per day, exclusive of lunch period (except where lunch period is paid for), 5 days per week; i.e., 40 hours per week, subject to the following exception:

Exception: At one-man points where the service of an employee is not regularly required for a full 8 hours daily, scheduled work periods shall be established and bulletined to conform to the requirements of the service. Employees at such points shall be paid at the straight time rate for service performed during regular bulletined hours on week days, and at overtime rate for service performed in excess thereof. This exception shall not apply where it is possible to arrange the force to conform to an 8-hour day."

The Organization also relies on Second Division Award No. 4427 to uphold its position. The Carrier alleges that these positions were abolished due to a curtailment in the number of car departures out of Chicago via the B & O Railroad in September, 1968, resulting in reduced maintenance and repair work to be performed. Carrier states that there was no need for Electrician off the Chicago Central District roster for a full 8 hour day. A new position was established under Bulletin EL-4 and was awarded to Electrician P. L. Banks on September 9, 1968, with hours of 9:00 A. M. to 4:00 P. M. with no rest days. The abolished positions had hours of 8:00 A. M. to 4:30 P. M. with rest days of Saturday and Sunday. Carrier contends that no evidence has been presented to indicate in what manner the Agreement was violated in abolishing the involved position and states that Rule 49 confers the right of Management to reduce or adjust forces and that Award 4427 (supra) is in palpable error. The Organization then takes the position that since the involved seniority district is a district and not a one man point, the exception quoted in Rule 21 is not applicable.

This Board is placed in the position of accepting sustaining Award 4427 or accepting denial Awards Nos. 4730 and 4731. All three of the cited awards are in point. Therefore, this Board must, under the circumstances and of necessity, declare either the sustaining award or denial awards in palpable error.

A very careful perusal of the record and all of the exhibits contained therein, when coupled with the reasoning contained in the three cited awards, leads this Board to the conclusion that Awards Nos. 4730 and 4731 of this Division (Johnson) contain the better reasoning and conform to the undisputed evidence in the record. Persuasive in reaching this opinion was the statement attributed to Mr. William F. Hartzheim, who at the time of making the statement was acting as Chairman of the Electrical Workers' Negotiating Committee, as follows:

"Of course, by a one man point, we mean a point where one electrician is employed."

This quotation could only have one meaning and is not susceptible to more than one interpretation that a one man point can be a point lying within a district or agency, if it is a place where only one electrician is employed. Therefore, a "one man point" was created when the two electricians' positions were abolished in this instance and a new position was established under bulletin. It follows that the Carrier acted within the exception outlined in Rule 21 of the July 1, 1948 Agreement, which allows such action at one man points where the service of an employee is not regularly required for a full 8 hour daily, scheduled work period.

Therefore, this Board holds Award 4427 of this Division (Daly) in palpable error and upholds the reasoning and resulting opinion of Awards 4730 and 4731 (Johnson) of this Division.

AWARD

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 November, 1970.

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