

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (System Federation No. 3, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Kansas City Terminal Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Terminal Railway Company violated Rules 21 and 67 of the July 1, 1936 controlling agreement, Article III of the September 25, 1964 Agreement on Monday, June 3, 1974, when they assigned Machinist LaTurner to perform electrical work belonging to the Electricians holding all contractual rights to said work.
2. That accordingly, the Kansas City Terminal Railway Company compensate Electrician B. E. Grissom four hours (4') at the punitive rate for Monday, June 3, 1974.

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.

Prior to June 3, 1974, a crane had been damaged. On that date, a Machinist was instructed to remove the broken battery and cable and voltage regulator. The Carrier states that said action was necessary to remove an unsafe work condition during the time that the Welder was straightening the damaged housing. Thereafter, the Machinist installed the battery, cable and voltage regulator.

The Organization claims a violation of Rule 67:

"Electricians' work, including regular and helper apprentices, shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards,

"meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment, including steam and electric locomotives, passenger train equipment, winding armatures, fields, magnet coils, rotors, transformers and starting compensators, and all other work generally recognized as electricians' work."

asserting that regularly assigned Electricians perform the work exclusively throughout their regular assignment.

The initial denial letter on the property refers to a claim for "attaching" a battery. The Organization did not object to that characterization of the basis for its demand. Moreover, while the record is not entirely clear, our review of it seems to confirm that the employees' assertion of a violation centers around the installation - rather than the removal of the damaged equipment.

The Carrier asserted, on the property, that the General Foreman did not instruct the Machinist to re-apply the new material, but the Foreman discovered, at a later time, that he had: "of his own volition ... installed the battery, cable and voltage regulator."

Although the Claimants produced statements from the Machinists Union's Local and General Chairmen, they did not offer a rebuttal to the Carrier's statement as to the voluntary nature of the installation work. Accordingly, the Board finds - under this record - that the work which assertedly violated the Agreement was voluntarily performed without direction by the Carrier.

We are of the view that as long as there is no showing of a subterfuge, direction, instruction, or tacit approval, etc., a purely voluntary act by an employee should not be the basis for a claim that the Carrier violated the Agreement. See Awards 6858 and 6898.

We make no findings concerning the other assertions and contentions advanced by the parties.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of October, 1976.