

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That accordingly the Houston Belt and Terminal Railway Company violated Rules 22(a) and (b), 100 and Memorandum Agreement appearing on Page 45 of the September 1, 1945 controlling agreement when they assigned Signalman J. R. Dean to performing electricians' work Saturday August 16, 1975, thus, depriving Electrician Nunn of his contractual rights to said work at Houston, Texas.
2. That accordingly, Carrier be ordered to compensate Electrician Nunn two hours and forty minutes (2'40") at the time and one-half rate for Saturday, August 16, 1975.
3. In addition to the money amounts claimed herein, the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of 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.

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 Claimant, E. L. Nunn, is employed on the first shift as an electrician at the Carrier's facility at Houston, Texas. His assigned work days are Monday through Friday; his rest days, Saturday and Sunday.

At about 4:00 a.m., Saturday, August 16, 1975, an insulated rack supporting overhead 3-phase service wires atop a pole fell to the ground. Repairs involving returning the fallen rack and service wires atop the pole were made by a Signalman, instead of by electrician, the Carrier maintaining that it made this work assignment after having tried unsuccessfully for 2 hours to reach Claimant Nunn by telephone.

The record indicates that:

1. Claimant Nunn submitted an affidavit that he was at home and available for call on the Saturday in question and did not receive a call from the Carrier. (Employees' Exhibit I)
2. The Day Foreman on duty at the time the rack fell did not notify the Electrical Supervisor of the event until after 7:00 a.m. It was the Electrical Supervisor who allegedly tried for 2 hours to contact the claimant, to no avail. (Carrier Exhibit B)
3. The Signaller who did the repair work arrived on the job between 10:15 and 10:45 a.m. (Employees' Exhibit I, p. 3)
4. Other electricians were on duty at the time, although the Carrier maintains that they were not qualified, by license, to do the work required (Carrier's Submission, p. 3); that the Carrier in the past had been unable to get them to climb poles, etc., nor had they ever done live electrical work. (Carrier's Rebuttal)

Claimant Nunn lives about 35 miles from Houston. Contacting him would have required a toll charge (long distance) call. Carrier's Exhibit G asserts that contacting the claimant "necessitates a long distance call". However, the record indicates that the Carrier did not negate the claimant's affidavit that he was at home on the day but that he did not receive a telephone call.

This Board has often ruled that when a party to a dispute asserts an affirmative defense, as the Carrier here does that it tried, without success, to reach the claimant for 2 hours, some probative evidence must be submitted. The record discloses that during the handling on the property no proof was ever submitted to substantiate the Carrier's contention that claimant was called. The claimant, under the agreement, should have been called to perform the repair work in accordance with Rule 100 (Classification of Work - Electrical Workers). The Carrier must sustain the burden of proving that it called the claimant. This the Carrier failed to do.

Therefore, the claim of the Petitioner must be upheld.

The Petitioner also requests interest on the money amounts claimed. There is no provision in the agreement to support a claim for interest. This Board has consistently denied claims for interest where there is no rule providing for such payment. (Third Division Awards Nos. 6962, 13478, 15709, 18433; Fourth Division Award No. 2368; First Division Awards Nos. 13 098, 13 099; Second Division Awards Nos. 2675, 5467, 6574, 7030)

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Award No. 7374
Docket No. 7288
2-HB&T-EW-'77

A W A R D

Parts 1 and 2 of claim sustained; part 3 of claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of October, 1977.