

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 Employee:

1. That the Houston Belt and Terminal Railway Company violated Rules 28(a) and (b), 23 and 100 of the September 1, 1949 controlling agreement when they assigned Signalman D. King to performing electricians' work Tuesday, July 20, 1976, thus, depriving Electrician C. R. Wilson of his contractual rights to said work at Houston, Texas.
2. That, accordingly, Carrier be ordered to compensate Electrician C. R. Wilson two hours and forty minutes (2'40") at the punitive rate for Tuesday, July 20, 1976.
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.

Claimant argues that the calling of a Signalman to assist electrician Roy Paul in repairing and restoring the fallen overhead three (3) phase service wires was explicitly violative of Agreement rules.

Carrier contends, on the other hand, that claimant was not a credentialed maintenance electrician and being unable to contact electrician E. L. Nunn, a qualified pole climber, the situational imperatives necessitated calling the Signalman who was the only qualified pole climber in the Signal Department.

This Board has carefully reviewed the detailed record to determine precisely the bona fides of this dispute. But we find in Carrier's ex parte submission on page two (2) thereof, a well developed and articulated argument that the Signelman used the "orchard picker" equipment to facilitate the required repairs. Specifically, Carrier notes for the first time that, "Due to the emergency of needing turntable to adjust power after maintenance electrician Paul arrived and not being able to contact the other maintenance electrician, Mr. Paul suggested that the 'orchard picker' owned by the Carrier and used and operated by its Signal Department be pressed into service. Mr. Paul could not climb and stated he could make repairs to turntable from cradle of picker if it was operated properly and if not, Signelman King, who operates truck, was also a pole climber and he could get to rotary. Thus the necessary repair was made by maintenance electrician Paul with the assistance of Signelman King."

This was an entirely new substantive averment that was not raised on the property during the handling of this grievance and accordingly is inconsistent with the unambiguous specific requirements of Circular One (1).

We will not discuss, therefore, the relative merits of the jurisdictional craft assertions made herein, since the Circular One (1) procedural omission disposed of this claim.

Moreover, while we will sustain petitioner's request on the base money amounts claimed, we cannot award compensatory interest payments in the absence of a specific agreement provision. This Board has consistently refused claims for interest where there is no rule providing for such payment.

See, for example, Second Division Awards 7374, 2675, 5467, 6574, and 7030).

We will sustain the claim, but without interest.

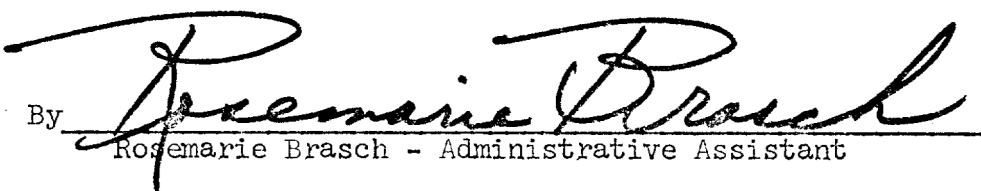
A W A R D

Claim sustained to the extent expressed in the Findings.

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 6th day of December, 1978.