

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Electrical Workers)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 25(a), (b) and (c), 26(a) and 107(a) and (c) of the June 1, 1960 controlling agreement when they assigned Clerk F. G. Gonterman at Coffeyville, Kansas on Sunday, August 22, 1976 to perform telephone maintainers work, i.e., to change cables from Computer to Data Set connected to Incoterm and also Yardmaster Univac to Incoterm.
2. That, accordingly, Carrier be ordered to compensate Telephone Maintainer J. C. Schaiff, Jr. four hours (4') at pro-rata rate for Sunday, August 22, 1976.

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, a monthly rated Telephone Maintainer, was off, on Sunday, August 22, 1976, his regular rest day, when a DEC (Digital Equipment Corporation) computer located in the yard office at Coffeyville, Kansas failed. Said computer was plugged into another piece of equipment, known as a data modem for transmissions to and from the central computer located in St. Louis, Mo. The computer was also plugged into another data modem for the operation of the local Univac printers at Coffeyville. The result of the DEC computer failure was to bring operations at Coffeyville to a halt.

A back-up unit, known as an Incoterm terminal, is used for such emergencies when the DEC computer fails. Substituting the Incoterm terminal for the

DEC Computer necessitates unplugging two DEC computer cables, one from each of the two data modems, and, in their place, plugging in the two cables from the Incoterm terminal. The cable plugs thereof are the same as common electrical plugs except each plug has 25 connector pins. Said plugs are secured in place by screws from the plug to the equipment to prevent their accidentally being dislodged.

A clerk assigned to operate the data equipment, in said Coffeyville Yard Office, unplugged the defective DEC Computer and plugged in the back-up Incoterm terminal unit. In consequence thereof, the instant claim was filed.

Rules 26 (a), 107 (a) and (c) read:

"Rule 26 (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work."

"Rule 107 (a). Electricians' work, including regular and helper apprentices, shall include electrical wiring, maintaining, repairing, rebuilding, inspecting, and installing of all generators, switchboards, meters, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon locally), axle lighting equipment, electric lighting fixtures; winding armatures, fields, magnets, coils, rotors, transformers and starting compensators; inside wiring at shops, and all conduit work in connection therewith; steam and electric locomotives, passenger train and motor cars, electric trucks, telephone equipment on the Western and Southern Districts only and all other work properly recognized as electricians' work.

* * * * *

(c) Western and Southern Districts only.) Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. Ordinary maintenance or construction work not heretofore required

"on Sunday will not be required on the sixth day of the work week. The straight time hourly rate for each employe shall be determined by dividing the monthly rate by *208-2/3 hours. Further wage adjustments, so long as monthly rates remain in effect, shall be made on the basis of *208-2/3 hours per month. Except as specifically provided in this paragraph (c), the rules applicable to monthly rated telephone maintainers prior to September 1, 1949, shall continue without change."

*Changed to 213 hours Jan. 1, 1976.

The plugging in or unplugging, as here complained of, required neither electrical knowledge, skill or training for the performance thereof. It was not denied that historically that which is complained of here has been performed by others, particularly machine operators. The rules offered in support, which are quoted hereinabove, neither expressly or implicitly reserve the performance of such work thereof to Claimant's craft and class. Our Board in its Award 6204 (Simons), involving the same parties here held:

"The record in this dispute does not disclose, nor has this Board been able to locate in the files of the Adjustment Board any rule or memorandum agreement detailing the work jurisdiction of Telephone Maintainers. Examination of Rule 107(c) discloses that it is bereft of a detailed delineation of the work jurisdiction of Telephone Maintainers.

Organization cites violation of Rule 26 of the June 1, 1960 agreement. Yet the implementation or invocation of said rule requires as a prerequisite, an extant rule or agreement defining the work jurisdiction of Telephone Maintainers. As noted above, this Board has neither such a rule or an agreement before it, and thus the Organization's claimed violation cannot be tested, and therefore said claim necessarily lacks inherent merit." (Underscoring added)

Here, the burden to prove that Telephone Maintainers have the exclusive right to the performance of such work rested with the petitioner and they have failed thereof. In that connection Referee Dorsey, in our Award 5928 held:

"The burden of proof that the work was of a kind, by contract, exclusively, reserved to Electricians is vested in that organization.

"... Certainly it is not 'work generally recognized as electricians work' which is a scope phrase general in nature and under which Electricians, to prevail, would have to prove that the work had been historically exclusively performed on Carrier's property, system wide, in the past. Electricians, in the record before, did not satisfy that burden. We, therefore, will deny the claim."

Here, we, too, are impelled to deny this claim.

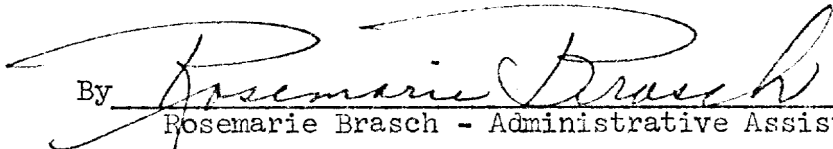
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of May, 1979.