

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That at its Tampa Rip Track on December 27, 1976, the Seaboard Coast Line Railroad Company violated the controlling agreement when Carrier Supervisor operated the ten (10) ton crane instead of calling Crane Operator L. R. Smith who was available and First out on the Crane Operator's overtime board.
2. That Crane Operator L. R. Smith be compensated for four (4) hours at the pro rata rate account of Carrier's violation of Rules 5, 26, 95 and Appendix "Q" of the controlling agreement effective January 1, 1968 as subsequently amended.

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.

On December 27, 1976 the regularly assigned second shift crane operator at Rip Track Tampa, Florida, reported that he would be late in arriving for work. During his absence it became necessary to perform certain work utilizing a ten ton crane. The Carrier called an on duty electrician to perform the work but prior to his arriving at the work site, the supervisor operated the crane for some five (5) minutes.

There is no question but that under Rule 95 the operation of the crane is to be performed by a crane operator or, in case of their unavailability an electrical helper.

Rule 95 - Electric Traveling Crane Operators - reads:

"(a) Electric traveling crane operators will be assigned to operate overhead traveling cranes having a capacity less than forty (40) tons. This not to include such cranes operated from the floor.

(b) Electric traveling crane operators, capacity of forty (40) tons and over, shall be paid the rate as shown in Rule 49 of the agreement.

(c) When necessary to fill electric crane operator positions, electrical helpers will be used if there are no electric crane operators available."

The Carrier has taken the position there was an emergency situation present which justified its use of supervisory personnel. This has remained a mere allegation totally unsupported by evidence. This defense must fail.

Further, the Carrier takes the position that it is consistent with the rules of the Agreement and past practice for supervisory personnel to perform small amounts of crane operator work in situations such as that which existed in the instant case. We cannot agree. The rule is clear in that the work belongs to the crane operators or, in their absence, electrical helpers. There is no exception for the performance of work by supervisors such as took place in the instant matter.

When the Carrier determined to perform the work they were bound to use the proper employee. The claimant was available to perform the work and should have been called. Under Rule 5(A) a four hour call is provided for work of less than two hours and forty minutes. The claimant is entitled to same.

A W A R D

Claim sustained.

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 28th day of November, 1979.