

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) violated the current agreement when Electrician's Sid Curry, Joe Rinaldi, and Bill Kibler were denied their contractual right to perform work of the electrical craft on August 31, 1978 and September 5, 1978 on an overtime basis at Brighton Park Turbo Facilities, Chicago, Illinois.
2. That accordingly the National Railroad Passenger Corporation (Amtrak) be ordered to allocate the overtime work in compliance with the agreement and that the Electrician's Sid Curry, Joe Rinaldi and Bill Kibler be compensated for eight (8) hours at the overtime rate of pay being equally divided between the Claimants account the Carrier improperly assigned work to Technician Ray Ives four (4) hours on August 31, 1978 and four (4) hours on September 5, 1979 in violation of the current agreement.

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.

The record indicates that the Claimants were employed by the Carrier as Journeyman Electricians at the Brighton Park (Chicago) Turbo Maintenance Facility on August 31 and September 5, 1978, the dates of the claim. On each of the dates of the claim, Electrical Technician Ray Ives worked four hours overtime to perform service on Cab Signal Equipment.

The Employees submit that the Carrier in the instant dispute, violated the provisions of the current agreement Appendix "H", the pertinent part of the rule reads as follows:

"Employees in the categories above will not be called for overtime as a Journeyman when other Journeymen are available for such overtime work at the point."

The employees referred to in the above rule are classified as technicians.

The Employees submit that the Claimants were qualified Journeyman, available for overtime on the dates of the said violation.

The Carrier's position is that at no time on the property did the Organization offer any evidence to support the allegation that the Carrier violated the existing Agreement by assigning work normally performed by journeymen electricians to the only qualified individual available, a Field Technician/Train Rider. This individual performed work on a Cab Signaling System on an overtime basis. It is a prerogative of management to determine fitness and ability among employees.

It is the Carrier's further position that the instant claim is improperly before the Board, and should be dismissed, based on the de minimus doctrine, as well as the fact that the Organization has appealed this case to final and binding arbitration without identifying the proper grievant.

The claim is based on an alleged violation of Appendix "H" previously cited. The alleged violation occurred when the Carrier assigned a "Field Technician/Train Rider" to perform work on a "Cab Signaling System" on an overtime basis and did not assign the overtime to an available journeyman as per Appendix "H". The failure to designate an individual grievant, while a procedural defect is not deemed sufficiently fatal to bar the grievance.

What is of significance is the right of the Carrier to determine fitness and ability to perform among their employees. This fact is generally accepted by the parties and is controlling. The Carrier asserts the work was performed by the "only qualified individual available". Although both the identified Claimant Journeymen and the Field Technician Rider are in the same craft, this assertion by the Carrier of the "only qualified individual" is not persuasively rebutted in the record by the Organization.

If the work represents an "intra-craft" dispute, this Board has previously found in a similar dispute:

"The contention of the organization that testing involves all work when outside electricity is applied from an outside source is without merit. Neither the agreement nor the bulletin sustains such a subdivision of electricians' work. Such an interpretation would be a purely arbitrary one that would be very impractical in its operation. The division of work between members of the same craft as the exclusive work of each division ought not to be made except where the parties by agreement have clearly so contracted. (Award 2376 Referee Carter)"

The Organization has not alleged or demonstrated a past practice, nor has there been any showing that the work had been performed system wide by journeymen, exclusively.

The Board has carefully considered the record in this regard, and finds the Organization has failed to meet the burden imposed on it. The claim must be denied.

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 13th day of January, 1982.