

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
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(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated Rules 26, 86 and 87 of the April 1, 1945 controlling agreement, and Article III of the September 25, 1964 Agreement when they assigned B&B Mechanic W. Fitzgerald to perform electricians' work on Monday July 31, 1978, thus, depriving Electrician Larry Roberts his contractual rights under the provisions of the Agreements at St. Louis, Missouri.
2. That, accordingly, Carrier be ordered to compensate Electrician Larry Roberts two hours and forty minutes (2'40") at time and one-half for Monday July 31, 1978.
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 record indicates that Claimant was employed by the Carrier as an electrician with assigned work week and bulletined hours, Thursday through Monday, 4:30 pm to 1:00 am, rest days - Tuesday and Wednesday.

Mr. W. Fitzgerald is employed by the Carrier as a B&B Mechanic with assigned work week and bulletined hours Monday through Friday, 7:30 am to 4:30 pm, rest days - Saturday and Sunday.

The Carrier was desirous to install a communications box at the Lesperance Street Yard Office that required the digging of a hole to set a pole stub after which the communications box was to be mounted thereon.

The Communications Maintainer and Assistant Communications Maintainer were assigned to perform the work, however, additional help was needed. The record shows B&B Mechanic Fitzgerald assisted at about 9:00 am on Monday, July 31, 1978.

The Organization cites page 1 of the Controlling Agreement which states:

"It is understood and agreed that the rules and rates of pay herein provided will apply to all classes of employees represented by System Federation No. 25 in the various departments of the railroad to whom the present rates of pay and rules governing employment are at present applied.

At present, in addition to employees in the Mechanical and Car Departments, System Federation No. 25 represents the following:

Maintenance of Way Department, (except Signal Department):	Electricians *** "
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The Organization maintains this rule sets forth the Electrical Craft's right to perform work under their Agreement as they have regularly done, and further the Carrier recognized B&B Electricians as the parties to assist the Communications Maintainers when the need is apparent.

The Organization cites Rules 26, 85, 86 and 87 as establishing their claims that the disputed work is exclusively the work of the Claimant.

The Carrier contends that the Organization has failed to show that the work of digging a hole, is by custom, practice, tradition, or Agreement, work accruing exclusively to a member of the Electricians' craft. The Carrier argues the digging of a hole requires no special skill, training, knowledge or techniques. The Carrier claims Messrs. Engel and Gibson, members of the International Brotherhood of Electrical Workers, enlisted the aid of B&B Mechanic Fitzgerald, who in turn volunteered to accompany them to the work site and dig the necessary hole without instructions from proper authority to do so.

The claim of the Employees essentially asserts that the Carrier was in violation of the cited Articles of the controlling agreement "when they assigned B&B Mechanic Fitzgerald to perform electrician's work" (emphasis supplied) on July 31, 1978.

In their letter of September 21, 1979, some fourteen months later, the Communication Maintainer and the Assistant Communication Maintainer describe the events as follows:

"The undersigned wish to advise that on July 31, 1979 we were assigned to set a pole stub at Lesperance Street Yard for the mounting of a telephone box.

It has always been past practice to assign a B&B Electrician to assist us when necessary.

Unbeknown to us by whom, B&B Mechanic W. Fitzgerald was assigned to assist us in setting the pole stub."

The record before the Board is silent as to which superior, if any, actually assigned B&B Mechanic Fitzgerald to dig the hole. Yet the assertion of the Employees is clear, the alleged assignment was in violation of the agreement. The burden of establishing such an allegation rests with the Petitioner. Referee Kenan in Third Division Award 15670 noted "The Employees have the burden of proving every element of their claims". There is no proof of who assigned Fitzgerald and no rebuttal to the Carrier's assertion that Fitzgerald volunteered to perform the task with the two electricians.

In Third Division Award 22942, Referee Eischen determined:

"In denying the claim, Carrier asserts that the work was assigned without its direction or approval. As was noted in our Award 3-20721, Carrier cannot be held responsible for work performed 'without instructions or communication with anyone in authority from the Carrier.' It is apparent from the record that the C&NW inspector acted on his own motion. Thus, there was no actual or apparent BN authority extended and no principal-agent relationship established. Accordingly, Carrier may not be held culpable for the actions of the C&NW inspector."

The Employees cite Rules 86 and 87 which state in pertinent parts:

"RULE 86

CLASSIFICATION OF ELECTRICIANS

Electricians' work shall consist of ... and all other work generally recognized as electricians' work."

"RULE 87

CLASSIFICATION OF LINEMEN

..., and other work generally recognized as lineman's work not provided for in Rule No. 86."

The task of digging a post hole does not require the skills of an electrician within the terms of Rule 86. The Board has held in other disputes of this nature (see Second Division Award 2223) involving the electrical workers:

"*** We have held that there are certain types of work requiring no skill or training to perform that cannot be said to belong to any craft. We think the reasoning of Awards 6220 and 2932, Third Division, has application here. The following from Award 2932 seems pertinent here:

'The replacement of a burned out electric light bulb in a train order signal requires no special skill. It is just as commonplace as the replacing of a defective electric bulb in one's home. It is not recognized as the attribute of any particular trade or profession. It is a routine function which anyone

could well perform. To hold that a carrier must call a skilled employe who might often be a considerable distance away, to replace an electric light bulb of ordinary type, was never contemplated by the Scope Rule. If it should be so construed of a contractual absurdity by interpretation.

The Board recognizes the necessity of protecting the work of signalmen as it does any other group under a collective agreement. But this does not mean that the simple and ordinary work that is somewhat incidental to any position or job and requiring little time to perform, cannot be performed as a routine matter without violating the current Agreement. To come within the scope of the Agreement it must be work requiring the exercise of some degree of skill possessed by a signalman. *** The contentions of the organization attempt to draw too fine a line and tend to inject too much rigidity into railroad operation when a reasonable amount of flexibility is essential to the welfare of both the employes and the carrier. We do not think that a proper basis for an affirmative awards exists.'" (Emphasis ours)

The disputed task of digging a hole for the post is not found to require some degree of those skills possessed by an electrician.

The exclusivity of such a task as electrician's work has not been established in the record nor has evidence of prior practice on the property been advanced.

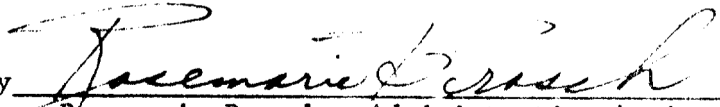
A W A R D

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 13th day of January, 1982.