

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 1 and 24(a) of the Communications Agreement effective August 1, 1977; Memorandum of August 12, 1960; and, Article III of the September 25, 1964 Agreement when they assigned Electrician J. N. Dodd to perform communications maintainers work, thus, denying Communications Maintainer R. A. Eaton at North Little Rock, Arkansas his contractual rights under the Agreements and his rights in the division of work under the Memorandum, on June 7 and 8, 1979, and July 13, 1979.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer R. A. Eaton two and seven-tenths hours (2.7') each at the overtime rate for June 7 and 8, 1979, and July 13, 1979.

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.

It is undisputed that Electrician J. N. Dodd replaced the handsets on mobile radios on three different diesel units on three different dates. The dates were June 7, June 8 and July 15, 1979. The Organization contends that the replacement of handsets by electricians is expressly forbidden by the August 1, 1977 Agreement, Article III of the September 25, 1964 Agreement and a memorandum dated August 12, 1960, which is incorporated into the August 1, 1977 Agreement. Most relevant to this dispute are Rule 1 and the August 12, 1960 Memorandum. They are quoted below in pertinent part:

"Rule 1. SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employees in the Communications Department specified in this Agreement engaged in the construc-

tion, installation, maintenance, repairs, inspection, dismantling and removal of telephone and telegraph transmission and switching systems and associated equipment such as telephone, telegraph and teletype equipment, fixed and mobile radio used for railroad operational purposes, (including microwave systems), closed circuit television, interoffice communications systems, yard speaker systems, and all work generally recognized as communications work; provided, however, that this will not prevent others acting under the direction of a Communications Supervisor or District Officer from utilizing spare equipment limited to plug-in modular units requiring no specialized knowledge or skills to restore service in cases of emergency.

NOTE: Nothing above shall prohibit a Supervisor in the Communications Department from inspecting and testing communications equipment and circuits in the performance of his duties."

Memorandum dated August 12, 1960:

"We have agreed between division of work with reference to electricians and telephone maintainers captioned rolling stock. On the rolling stock we have agreed that the original installation complete, with the exception of the radio units enclosed and locked in the radio rack, will be electricians' work.

Regarding maintenance, electricians will maintain all the conduit and the wiring, including the primary power supply. Telephone maintainers' work will include maintenance, repair, replacement of hand sets, antennae, speakers and other equipment relative to radio apparatus.

In the seven telephone maintainers would require assistance in changing out antennae, electricians will assist them on these jobs."

The issues and arguments being made in the instant case are identical to those recently considered by the Board in Award 8815. In Award 8815 the Board stated:

The 1960 memorandum was explicit in classifying the 'replacement of hand sets' as work of the then 'telephone maintainers'. This memorandum was not rescinded or superseded by the 1977 Agreement, but rather the Parties elected to make it part of their Agreement. Both became controlling in the instant dispute.

The Board notes that Rule 1 and the 1960 memorandum must be read in 'pari materia' and each construed in reference to one another. Together they stipulate that the 'replacement of hand sets' is the normal work of the 'communications maintainers', but in an emergency those hand sets, which are of a 'plug-in modular' species, can be replaced by 'others', under the direction of a Communications Supervisor or District Officer.

The evidence presented in the instant dispute is found to be inconclusive as to whether or not a bona fide emergency existed sufficient to permit the discretionary action taken by the Carrier. The record is not clear if the disputed work of replacing an inoperative hand set was a known condition requiring routine replacement or an emergency under Rule 1; requiring action necessary to restore service.

The Carrier has failed to prove its assertion and defense by competent evidence that an 'emergency' existed. Absent some proof by the Carrier of an emergency, which required prompt action and which could not wait to be handled as routine communication maintainers work as per the agreement, that Agreement is found to have been violated."

There is no basis for distinguishing the instant case and Award 8815. Based on the principle of stare decisis, authoritative weight should be given to prior decisions when they involve the same issue. Therefore we follow the Board's recommendations in Award 8815.

We will not only follow Award 8815 on the ~~merits~~, but also on the issue of damages. In Award 8815, the Board did not award any damages on the finding that the evidence revealed that the disputed work was sufficiently minimal that the Board could not deem a compensatory award warranted. We agree, therefore, no compensatory damages will be awarded.


A W A R D

Claim sustained to the degree and limits specified above.

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 10th day of February, 1982.