Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9108
SECOND DIVISION Docket No. 9028
2-CR-EW-'82

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That under the current Agreement Electrician P. E. Blinn was improperly compensated on April 5, 1979, when the Consolidated Rail Corporation (ConRail) moved him from his regularly assigned position and to a different location which is in violation of Rule 2-A-1(e).

2. That accordingly the Consolidated Rail Corporation (ConRail) be ordered to compensate Electrician P. E. Blinn an additional three (3) hours pay for April 5, 1979 as required by the 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 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 P. E. Blinn is an Electrician, employed by Carrier in the Supporting Force at the Conway Engine House, on the 7:00 a.m. to 3:00 p.m. shift during a Monday through Friday work week. On April 5, 1979, Claimant was assigned to the Load Box to test a diesel unit. As a result of this assignment, the Organization submitted a claim requesting three hours penalty pay under Rule 2-A-1 (e) of the Schedule Agreement then in effect. The claim was denied and has progressed to this Board for resolution. The portion of Rule 2-A-1 (e) pertinent to this case reads as follows:

> "Except as provided in Transport Workers Regulation 2-A-4 (Rule 2-A-5 for System Federation), an employe moved from one position to another on the same shift, at the instant of Management, will receive an additional three (3) hours' pay at the straight time rate of the regular assignment he holds for each day he is required to work on another position."

On February 10, 1965, a memorandum of understanding pertaining to the application of this paragraph was signed by both parties. The application of that memorandum is critical to this claim and reads as follows:

"MEMORANDUM

For the purpose of the application of this Rule an employe shall be considered as having been moved from one position to another on the same shift at the instance of management:

(1) If he is assigned to a vacancy on an advertised position other than his own and performs to a substantial degree the duties required by the vacant position;

(2) If he is assigned to the performance of work not ordinarily included in his regular assignment and such work performance becomes recognized as a 'position' by subsequent advertising under the provisions of Rule 2-A-1 (b);

(3) If he is assigned to the performance of work not ordinarily included in his regular assignment for a period of four (4) hours or more at the location of his regular assignment;

(4) If he is assigned to perform work whether ordinarily included in his regular assignment or not, at a location other than that of his regular assignment for a period of four (4) hours or more.

NOTE: The term 'location of his regular assignment' as used in paragraphs (3) and (4) above shall be understood to mean the location in his seniority district at which the employe performs the duties ordinarily included in his regular assignment."

The issue here is not the proper interpretation of paragraph 4 of the Rule in question or the application and interpretation of the Memorandum of 1965 but whether the facts of Claimant Blinns' case are covered under the Rule or under the interpretation.

The Organization argues that Claimant is a Support Force Electrician who was assigned to a Load Box job. This, it contends, caused Claimant to work at a location other than his regular site. He normally worked inside the Conway Engine House and the Load Box was located outside the Engine House. The assignment required that he perform work (load testing of locomotives) that is not a regular part of his normal duties. The Organization contends that either or both of these situations require that Carrier pay the claim as submitted. The Organization points to paragraphs 3 and 4 of the 1965 Memorandum for its support of this position.

Carrier, on the other hand, argues that prior to the Load Box being established as a position in 1973, Support Force personnel were assigned to Load Box work with no penalty being paid. After the Load Box position was established, some supporting force employes were occasionally paid the penalty when they worked the Load Box position. When Carrier's Labor Relations Department became aware of this, it stopped the procedure. It claims that these payments were made by a supervisor in error.

It further argues that since the Load Box position has been abolished, Carrier has reverted back to the procedures used prior to 1973. It finally argues that Load Box work is work regularly included in the assignment of an Electrician and that the Load Box operation is performed at the Conway Engine House location. Given these facts, Rule 2-A-1 (e) and the 1965 Memorandum interpreting paragraph 4 of that Rule do not apply and the claim should be denied.

This Board has carefully reviewed the record of this case and the awards submitted to support the parties respective positions. We must conclude that Carrier's case is the more persuasive. The Organization has not carried its burden of establishing that the operation of the Load Box is not work that would ordinarily be included in Claimant's regular assignment, or that the Load Box is not part of Claimant's work location, the Conway Engine House. Neither has the Organization been successful in establishing that the incidents of penalty payments made to Supporting Force Electricians working the Load Box constitute a past practice and were not mistakes of a supervisor, as Carrier claims.

The Load Box was operated by Supporting Force Electricians prior to 1973 with no penalties claimed. Carrier has abolished the position of Load Box Operator and has resorted to the procedures it used to get the work done prior to 1973. This Board sees no basis on which to require that each time a Supporting Force Electrician performs the Load Box operation for more than four hours that a three hour penalty be paid. Rule 2-A-1 (e) does not apply to the facts of this case.

Award No. 9049 (LaRocco) recently adopted by this Board addressed the identical issue presented here. We denied that claim. We shall do the same in this instance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of June, 1982.