

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

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

Dispute: Claim of Employees:

1. That the Carrier arbitrarily violated the Scope Rule of the Controlling Agreement in conjunction with the overtime agreement when they assigned work of the Electrical Craft to the Signal Department.
2. That, accordingly, the Carrier be ordered to pay Electrician R. Schaffer, eight (8) hours at the punitive rate of pay for July 12, 1978.

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.

Complainant Organization, the Electricians, allege Carrier assigned employes from the Signal Department to assist in performing work which falls within its craft jurisdiction as contractually provided for in its Scope Rule, Rule 5-F-1 (a) of the controlling Agreement effective April 1, 1952 as revised through July 1, 1979. Rule 5-F-1 (a) reads in relevant part as follows:

"5-F-1 (a)

None but Mechanic or Apprentices regularly employed as such shall do work specified as that to be assigned to full qualified Mechanics."

Scope A Mechanics

"Electricians work shall consist of ... electric wiring, installing, maintaining and repairing conduits and condulets, building, repairing and maintaining pole lines and support for service wires at shops, yards, building and structures..."

The Organization submits that on July 12, 1978, Electricians T. Koslik and M. Kinzel both with seniority at Mingo Junction, Ohio were working together on an outside wiring project. The Organization alleges that in the course of this work, Carrier reassigned Kinzel to other work on the basis Koslik no longer needed his assistance. The Organization contends that after Kinzel's reassignment, Carrier then used employes from the Signal Department to assist Koslik in performing the remainder of the work.

The thrust of the subject claim devolves upon the Organization's contention that Koslik was still in need of assistance at the time Kinzel was reassigned, and that instead of utilizing the services of Signal Department employes, Carrier should have called out the Claimant, Electrician R. Schaffer, who at the time was on his rest day.

In addition to the merits of the claim, the Organization alleges Carrier committed a procedural error in handling the claim, to-wit, the failure of the General Foreman to provide a reason in his written response denying the claim. The Organization maintains this is a violation of Rule 4-0-1 (a) of the controlling Agreement which reads in whole as follows:

"(a) A claim or grievance must be presented in writing by an employee or on his behalf by his union representative to the employee's General Foreman or other designated official within 60 days from the date of the occurrence on which the claim is based. Should any claim or grievance be denied, the General Foreman shall, within 30 days from the date same is filed, so notify, in writing, whoever filed the claim or grievance (the employee or his representative). If not so notified the claim will be considered as automatically denied on the 30th day after the date of the claim or grievance letter."

The Organization argues that when the General Foreman elected to issue a written denial instead of allowing the claim to be denied automatically by the rule, he was then obligated to give a reason for the denial and this failure makes the claim payable.

In response to the procedural issue, Carrier argues that Paragraph (a) of Rule 4-0-1 is self-contained and, as such, does not require that a General Foreman give a reason for his denial of a claim. The Carrier submits the denial feature contained in Paragraph (a) is solely a "Time Limit Rule" which only requires disallowance in writing, not that such a written communication be a good notice or that the denial constitute reasons therefor. Carrier further notes Paragraph (a) resulted from revisions to the controlling Agreement effective February 14, 1974, and that the present language differs markedly in intent from the previous clause which provided that a denial letter was required within sixty (60) days, otherwise claim would be payable as presented without precedent. In contrast, submits the Carrier, Paragraph (b) of Rule 4-0-1 which addresses denial of claims at the Superintendent-Labor Relations level does require that a reason be given when claims or grievances are not allowed. Rule 4-0-1 (b) reads in whole as follows:

"(b) A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed by the employee or his union representative within 60 days after the date it was denied. A claim or grievance listed 10 days prior to the date of a scheduled monthly meeting with the Local Committee will be discussed at such meeting. When a claim or grievance is not allowed the Superintendent-Labor Relations will so notify, in writing, whoever listed the claim or grievance (employee or his representative) within 60 days after the date the claim or grievance was discussed of the reason therefor. When not so notified the claim will be allowed."

As to the merits of the claim, Carrier argues the Organization has failed to offer any probative evidence in support of its position. Specifically, Carrier asserts that in presenting the claim, the Organization had the responsibility of identifying the nature of the disputed work performed and of furnishing the full name(s) and title(s) of the employee(s) who performed the work. This information notes the Carrier, was conspicuously missing in the position advanced by the Organization. Carrier contends the mere filing of a claim without supportive evidence is not sufficient basis to sustain it and therefore the instant claim should be denied. In support of its latter point, Carrier cites the following Third Division Awards, 19960 (Lieberman), 20356 (Dorsey), and 20780 (Edgett).

Carrier identifies the disputed work as having involved the straightening of a power pole line which it agrees is work that properly accrues to the Electrical Craft at the Mingo Junction Enginehouse location. However, Carrier adamantly denies that Signal Department employes were used to perform said work at said location on the claim date in question. Carrier asserts that Electricians Koslik and Kinzel themselves operated a C & S Department pole truck for approximately one (1) hour in performing the work in question. As no C & S Department employes were needed or used to straighten the power pole and in the absence of any probative evidence to the contrary, the Carrier submits the instant claim must fail for want of proof.

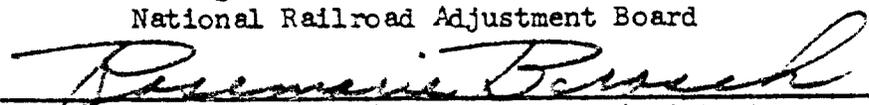
Based on all the evidence presented before this Board we find we must concur in the whole of Carrier's argument both as to the procedural issue and to the question of merits. We therefore conclude the instant claim must be denied primarily because the Organization failed in meeting its burden of proof.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.