

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

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

Dispute: Claim of Employee:

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.d; and, Article III of the September 25, 1964 Agreement when they assigned Electrician S. D. Vanderlinden to perform Communications Maintainers' work, thus, denying Communications Maintainer G. Spielbush at Kansas City, Missouri his contractual rights under the Agreements and his rights in the division of work under the Memorandum of December 1, 1978.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer G. Spielbush two and seven-tenths hours (2.7') at the overtime rate for December 1, 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 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 Organization contends that Carrier violated Rule 1, Scope, and Rule 24, Seniority, when it instructed electrician S. D. Vanderlinden to remove the radio hand set from MP Unit 2043 and install hand set on MP Unit 1951 on December 1, 1978. It also asserts that Carrier's action violated a Memorandum between the parties dated August 12, 1960.

Claimant, Glen Spielbush is a Communication Maintainer assigned to the Carrier's Kansas City Terminal Division.

This identical case, between these same parties and the same Claimant, was decided in Award No. 9254. There, we determined that Carrier's action in assigning an electrician to remove and install the radio hand set violated the Agreement unless Carrier demonstrated that it was due to an emergency situation.

Here, Carrier has failed to meet its burden of establishing an emergency situation.

Therefore, we must conclude, consistent with our earlier decisions, that Carrier's action violated the Agreement. However, consistent with our reasoning set forth in Award No. 9254, we must conclude that no compensation is due to Claimant.

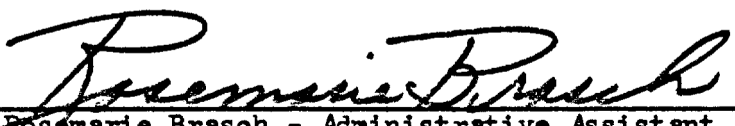
The Agreement was violated.

A W A R D

Claim sustained to the extent indicated in Findings.

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.