

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 Employees:

1. That the Missouri Pacific Railroad Company violated Rules 1 and 24 (a) of the Communications Agreement effective August 1, 1977; Article III of the September 25, 1964 Agreement when Mr. G. W. Smith, Trainmaster, assigned himself to perform Communications Maintainers' work in that he did remove the complete radio installation from Carrier's Mobile Truck No. 5490 on Thursday, December 14, 1978.
2. That, accordingly, Carrier be ordered to compensate Communications Maintainer J. J. Hoggard for Thursday, December 14, 1978, four hours (4') at the punitive rate.

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.

Claimant, J. J. Hoggard, is a Communications Maintainer headquartered at Poplar Bluff, Missouri. His regular work week is Monday through Friday, 7:00 a.m. to 4:00 p.m., standby day Saturday with Sunday as his rest day.

It is the practice for Carrier to accept bids on the sale of old and new trucks. Carrier had on its property, at the time of this dispute, Mobile Truck No. 5490. Carrier was desirous to replace Mobile Truck No. 5490 with a new truck.

On Thursday, December 14, 1978, Claimant was in North Little Rock, Arkansas, in a training school for Communication Maintainers as part of Carrier's retraining program when new equipment is introduced. On that day, Carrier needed to have a radio removed from Truck No. 5490 because the truck was to be traded that day. Because Claimant was at the training program, the Trainmaster assigned himself to perform the removal of the radio. This amounted to removing a radio mounting base fastened to the side of the truck with metal screws; removing a control that was fastened to the dashboard with metal screws; and removing an antenna mounted through a hole atop the truck's roof; and removing power wiring from the battery to the control head in mounting base and removing the control wiring from the mounting base to the control head.

The Organization claims that Carrier's action in allowing a trainmaster to perform the work violated Rule 1, Scope and Rule 24, Seniority. These state:

"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 construction, 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.

RULE 24. SENIORITY

(a) Seniority of employees in each class covered by this Agreement shall be coextensive with the scope of this Agreement."

Carrier, on the other hand, argues that it did not violate the Agreement. First, it asserts that Claimant was not available to perform the work because he was at the retraining program. Second, assuming that Claimant was entitled to perform the work, Carrier argues that he is nevertheless entitled to no more money because he is a monthly paid employee.

Even a cursory review of the Scope Rule indicates that the work performed by the trainmaster should have been performed by a covered employee. Moreover, the evidence introduced on the property indicates that this type of work has been exclusively performed by communication maintainers. In fact, Claimant was the one who installed the radio into Truck No. 5490.

Thus, we are persuaded that Carrier's action in allowing the trainmaster to perform the work was improper. Numerous Second Division Awards substantiate the argument that a trainmaster has no right to perform craft work. See Awards 1761, 1771, 2146, 2492, 2985.

However, we are persuaded that Claimant is entitled to receive no compensation here. First, the record evidence indicates that Claimant was not available to perform the work on the day in question. While the Organization argued that Carrier could have delayed trading in the truck, there is absolutely nothing in the Agreement that would require Carrier to delay the work in question. Thus, because Claimant was at retraining school, and because there is no evidence

to indicate that he was sent there in order to avoid having him perform the disputed work, we must conclude that Claimant was not available to perform the work.

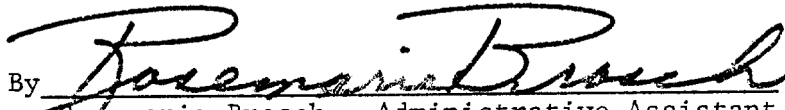
Second, assuming arguendo that Claimant was available to perform the work, he nevertheless would be entitled to no extra compensation. As a monthly rated employee, Claimant receives a monthly salary to cover all services rendered in this type of situation. All the work that he would have been called for would have been done during his normal bulletin hours. As such, Claimant has sustained no financial loss.

A W A R D

Claim sustained to the extent indicated in the 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.