

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles 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.d; and, Article III of the September 25, 1964 Agreement when they assigned Electrician D. L. Crawford to perform Communications Maintainers' work, thus, denying Communications Maintainer C. L. Qualls at Kansas City, Missouri his contractual rights under the Agreements and his rights in the division of work under the Memorandum, on October 16, 1978.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer C. L. Qualls two and seven-tenths hours (2.7') at the overtime rate for October 16, 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.

Claimant, a communications maintainer, seeks compensation at the overtime rate for two and seven-tenths hours because an electrician unplugged the handset from the radio on a diesel unit which is alleged as a violation of Rule 1 (Scope) of the Agreement between the parties.

A procedural issue is raised by the Organization because the Carrier did not attach to its submission to this Board the documented evidence presented on the property. It is often the practice of one party to accept the exhibits of the other party and thereby not duplicate them by attachment to its submission. We don't find this omission as cause to decide this matter on a procedural basis rather than address the merits.

The Organization also objects to the inclusion by the Carrier by reference in this matter, its submission in another docket. In review of such other document, this Board will naturally ignore any issues or defenses raised which were not raised on the property as evidenced by the claimant's exhibits.

This claim is one of a series of claims covering the same subject matter between the same parties, requiring interpretation of the same contractual provisions. One of these claims has been decided by this Board in Award 8810. We find that Award to have considered the subject thoroughly. We find no reason to question its rationale. Award 8810 provides in part as follows:

"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."

The Board also noted as follows:

"The record fails to indicate any effort of the Carrier to advance its 'de minimus' defense on the merits at the lower levels; consequently, such argument must, therefore, be deemed barred."

In spite of this last finding, the Board then decided as follows:

"Absent the showing of an emergency, and given the Board's conclusion that the Carrier violated the Agreement, this determination by the Board should serve as a caution against such assignments in the future. However, the evidence reveals that the disputed work is sufficiently minimal so that the Board finds without prejudice that no compensatory award is deemed warranted for this particular infraction."

This Board finds that Award 8810 having been decided by this Board based upon substantially the same rule and facts which it does not find manifestly improper that it will reach the same conclusion in this matter and deny the claim.

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Award No. 9346  
Docket No. 8689  
2-MP-EW-'83

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 26th day of January, 1983.