

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE: ( International Brotherhood of Electrical Workers  
(  
( Houston Belt and Terminal Railway Company

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Houston Belt and Terminal Railway Company violated Rules 22(a) and (b) and Rule 100 of the September 1, 1949 controlling agreement; Memorandum Agreement signed April 16, 1945; Article III of the September 25, 1964 Agreement; and, Article V of the August 21, 1954 Agreement when they assigned Master Mechanic Woodard and Diesel Electrician Wooldridge to perform Maintenance Electricians' work on April 16, 1981, thus, depriving Maintenance Electrician Neil MacInnes of his contractual rights under the provisions of the Agreement.
2. That, accordingly, the Houston Belt and Terminal Railway Company be ordered to compensate Maintenance Electrician Neil MacInnes eight (8) hours at straight time rate for April 16, 1981.

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.

The basic issue here is whether Diesel Shop Electrician O. A. Wooldridge performed work on April 16, 1981, which belonged exclusively to Maintenance Electricians and whether or not Master Mechanic Gordon Woodward, a supervisor, also performed work on the same day which belonged exclusively to Maintenance Electricians.

Maintenance Electricians repair electrical equipment in the yard. As such, they are required to be licensed by the City of Houston, Texas. Claimant was, on April 16, 1981, such a licensed Maintenance Electrician.

On April 16, 1981, the Master Mechanic directed Diesel Shop Electrician Wooldridge to pull eight wires out of conduit about eight feet, and replace 90 degree L.B. connector and also replace wires into breaker box panel. This was a one man job which took approximately thirty (30) minutes to complete. Carrier alleges that Master Mechanic Woodward performed no electrical work on that date.

Employees contend that the Memorandum of Agreement signed April 16, 1945, assigns Maintenance of Way electrical work exclusively to Maintenance Electricians. Since Wooldridge was a Diesel Shop Electrician and since only the Claimant was a licensed electrician, he alone and not Wooldridge should have been called on April 16, 1981 to perform the required electrical work. Claimant was on duty and worked the full scheduled hours on that date. According to the statement made by Oscar H. Horn, he and MacInnes were advised that the entire Diesel Shop yard was without electricity and that they were to proceed there to participate in making the necessary repairs to restore lighting.

The April 16, 1945 Memorandum Agreement, quoted in full in Employees' submission to this Board, in no way provides separate exclusivity of Maintenance of Way and the Maintenance of Equipment Departments, and that portion of the work known as Maintenance of Equipment Department will be within the scope of the Mechanical Department, Electrical Workers and that they will be carried on the Electricians seniority roster in the Mechanical Department. All Electricians have equal job status.

Rule 22 of the applicable agreement provides that seniority lists are maintained by craft and subdivisions. The craft is Electrical Workers and the subdivisions are Electricians, Apprentices, Electrician Helper, Generator and Motor Attendants and Crane Operators. Wooldridge and the claimant were on the same Electricians' seniority list. Each is qualified to bid for and perform Electrician's work wherever necessary on Carrier's property. There is no exclusivity differentiation between work on maintenance of way and in the Diesel Shop. The fact that the Claimant was licensed and Wooldridge was not is immaterial. That is a matter for the government authorities. It is not a contractual condition affecting seniority.

Carrier denies that Master Mechanic Woodward did any electrical work on the stated job on April 16, 1981. The only evidence presented by the Employees that he allegedly did perform some work are two memorandas, one from Oscar H. Horn and another from O. A. Wooldridge.

Mr. Horn's memo is dated February 10, 1982, ten (10) months after the incident and after this claim was first submitted. It is also dated seven (7) months after the Local Chairman first wrote to the Carrier appealing the Superintendent's denial. In his memo Mr. Horn states that he witnessed Woodward and Wooldridge working on an underground line which fed some electrical pumps in the yard. He stated that "Mr. Woodward had taped up the wires and fed them through the conduit. He had also put the connectors on the L.B. conduit that they replaced". Nowhere does Mr. Horn say that he saw Mr. Woodward tape the wires or feed them through the conduit, nor does he say that he saw Woodward put the connectors on the L.B. conduit. The mere fact that he saw Woodward and Wooldridge together is not evidence that Woodward performed work belonging to the electricians. He was there supervising Wooldridge.

Mr. O. A. Wooldridge was the electrician who performed the work on April 16, 1981. He, too, wrote a memorandum dated February 12, 1982 - ten (10) months after the incident occurred. He merely states that Woodward assisted him. He does not state what electrical work, if any, Woodward actually did. Supervision is assistance. It should be noted that Woodward was then also the Local Chairman who presented the claim on behalf of Mr. MacInnes.

The burden of proof is upon the Employees. That proof has not been met. Neither of the two memos constitute a preponderance of substantial evidence that Mr. Woodward actually performed electrical work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of October, 1983.