

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10726
Docket No. 10423-T
2-SOO-EW-'86

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated the current agreement on April 24, 1982, when Machinists R. Bohlman was improperly assigned to perform electrical work, which should have properly been assigned to Electrician Peter Rice.
2. That the Soo Line Railroad Company be ordered to compensate Electrician Peter Rice for two and two-thirds (2 2/3) hours' compensation.

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 employes 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 Claimant is employed by the Carrier as an Electrician at the Fond du Lac Shops in Fond du Lac, Wisconsin. The instant claim alleges that the Carrier violated the Agreement on April 14, 1982 when it improperly assigned Machinist to perform electrical work, which should have been assigned to the Claimant.

Rule 86, the Electrician's Classification of Work Rule that was in effect at the time of the claim, states:

"1. Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switch boards, meters, motors and controls, rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage batteries, axle lighting equipment, radio equipment, electric clocks, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, building, yards, and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors, and trucks; cables, cable splicers, high tension power house and substation operators, high tension linemen, and all other work generally recognized as electricians' work.

2. Men employed as generator attendants, meter attendants (not including water service meters), and substation attendants who start, stop, oil and keep their equipment clean and change and adjust brushes for the proper running of their equipment, power switchboard operators."

Although Rule 82 is specific on the nature of Electricians' work, it makes no reference to fire extinguishers. Accordingly, Rule 82 is of no assistance to the Organization. In Third Division Award No. 11526, the following was stated:

"It is a well established principle of this Division, that where there is no express reference to the work in the Scope Rule, that the intent of the parties can be only ascertained by past practice, custom and usage on the property. Awards 8001 (Bailer), 11028 (Hall), 10613 (Sheridan), 10715 (Harwood), 10954, 11120 and 11126 with the same Referee, 11128 (Boyd), 10931 (Miller), 10585 (Russell), 9625 (Begley), 7861 (Shugrue), 7806 (Carey) and others."

The initial paragraph of Rule 82 concludes with the phrase "and all other work generally recognized as electricians' work". To come within the scope of this broad generalized phrase, the Organization must prove the existence of a controlling practice whereby the work on fire extinguishers has been reserved exclusively to Electricians. In this connection, on October 24, 1983 D. Halkyn, General Chairman, sent C. M. Gormley, Director of Relations, a statement signed on September 26 and 27, 1983 by employees of various crafts (Machinists, Laborers, Pipefitters and Blacksmiths), which states as follows:

"We are presently employed at the Fond du Lac Shops by the Soo Line Railroad Company.

This is to certify that it has been a historical practice on this property to assign all installation and maintenance of fire extinguishers (particularly on roadway equipment or motor cars) to the Electricians. This work has been generally recognized as Electrical Craft work for as long as I have been employed here. The only exception to this was in April, 1982, when the Electricians filed claims because this work was improperly assigned to another craft."

It was not until December 14, 1983 that Gormley, Director of Labor Relations, challenged the statement and the signatures of the employees who signed the statement. However, the letter and attached documentation by Gormley, Director of Labor Relations, was not exchanged on the property and made known to the Organization prior to its submission to this Board. As a result, the December 14, 1983 letter and the attached documentation cannot be considered. Since the statement on the historical practice was not disputed by the Carrier as required under the Rules of the National Railroad Adjustment Board, the probative value of the document must be evaluated. The statement is specific in referring to the "historical practice" on the Carrier's "property to assign all installation and maintenance of fire extinguishers (particularly on roadway equipment or motor cars) to the Electricians." The statement goes on to indicate that "this work has been generally recognized as Electrical Craft Work for as long as I have been employed here." The seniority dates of the employees range from 1941 to 1974. There is nothing in the record to impair the trustworthiness and probative value of the statement and the employees of the various crafts who subscribed to the statement. Contrary to the contention by the Machinists Organization in its Submission to the Board, as an interested third party, that Machinists have performed work on fire extinguishers, eight (8) Machinists subscribed to the statement on the historical practice of the Electricians. Indeed, as opposed to the statement on the historical practice, the Carrier has submitted mere assertions that other crafts, including the Machinists have handled, installed, maintained, tested and recharged fire extinguishers. However, "assertions are not an adequate substitute for probative evidence". Therefore, consistent with Third Division Award No. 11526, "the intent of the parties has been ascertained by past practice, custom and usage on the property."

Based upon the record this Board cannot conclude that the work in question was de minimus or inconsequential. However, the Board has determined that there is no monetary loss inasmuch as the Claimant was working at the time the Machinists performed the work on the fire extinguishers. Thus, since there was no monetary loss to the Claimant, he is not entitled to any compensatory damages.

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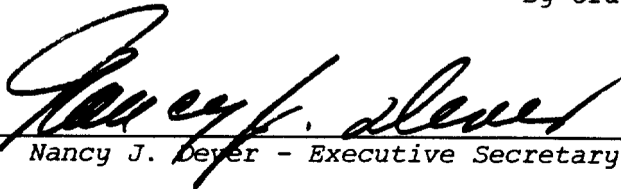
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1986.