

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
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employee:

1. That the Duluth, Missabe and Iron Range Railway Company (DM&IR) violated Rule 24C of the current Shop Craft Agreement when it assigned Mr. Del Angel to install new Bonds on new rail being installed on Duluth, Missabe and Iron Range tracks. These tracks were located on the Missabe Division while Mr. Angel is an Iron Range employee. Mr. Dale Krog filed a claim with the Duluth, Missabe and Iron Range Railway Company citing Rule 24C in support of his claim. Mr. Krog holds Missabe Division seniority.
2. Accordingly the Duluth, Missabe and Iron Range Railway Company be ordered to pay Mr. Dale Krog a four hour call for an Iron Range Division employee performing work on the Missabe Division which Missabe Division employees have first rights to.

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 employees 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.

There is very little dispute over the facts giving rise to the instant claim. The Carrier's Railroad consists of two (2) operating Divisions, the Missabe Division and the Iron Range Division. Historically, employees were hired by the Carrier and given seniority in either of the two (2) Divisions. Employees in each Division had rights to the work in their respective Division over the other Division. No employee held dual seniority.

On March 15, 1970 the parties negotiated "system seniority" Agreements contained in Rule 24 of the current Shop Craft Agreement. The Agreements allowed the Carrier to hire Electricians with system seniority which enabled them to accumulate seniority on a common roster with past employees. Included in the Agreements was Rule 24C which provides as follows:

"Iron Range employees will be granted the first right to any construction or emergency work on the Iron Range Division. Missabe employees will be granted the first right to any construction or emergency work on the Missabe Division. Any available furloughed employee will be returned to service before any electrical employee can cross division lines to perform construction or electrical work."

By virtue of Rule 24C Iron Range and Missabe employees were granted "first right to any construction or emergency work" in their respective Divisions. On March 21, 1983, the Carrier assigned a crew of employees from the Track Department to replace rail on existing trackage. This work included removing the worn rail from the ties and installing new rail in its place. The existing, worn rail contained "circuit bonds" at each joint where the rail ends abutted. As a result, it was necessary to have a Signal Maintainer present to re-install these bonds in the joints of the new rails. The location of the work was within the territory of Missabe Division. Del Angel, an Iron Range Signal Maintainer, was assigned to perform the work of installing the circuit bonds. The Claimant, a Missabe Division Signal Maintainer, observed his rest day on March 21.

The Organization contends that the Carrier violated Rule 24C because as a Missabe Signal Maintainer, the Claimant had "first right" to perform the installation of circuit bonds. At issue is whether the installation of circuit bonds comes within the intent and meaning of "construction or emergency work" on the Missabe Division.

The Board concludes that the work in question did not constitute "emergency work". An "emergency" is defined as "[A] situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action." See The American Heritage Dictionary of the English Language, (Houghton Mifflin Company, 1976). The fact that the signal system would not function properly, without proper bonding, does not mean that the installation of the circuit bonds on March 21 constituted emergency work. There is nothing in the record to indicate that a situation of a serious nature, developed suddenly and unexpectedly on March 21, 1983 demanding immediate action, such as the installation of circuit bonds.

Having established that the work in question was not emergency work within the intent and meaning of Rule 24, the remaining question to be considered is whether "construction" work was performed within the terms of the Rule. After carefully examining the record, the Board is persuaded that the installation of circuit bonds did not constitute "construction" work. The work in question involved no upgrading or expansion; there was no assembling of parts, building or erecting. The work consisted of "replacement-in-kind". Each existing circuit bond was replaced by the re-installation of a circuit bond by Signal Maintainer Angel. The placement of new rails on existing ties and existing road bed constituted maintenance; and the replacement of circuit bonds which were broken in the process is also maintenance work.

Third Division Awards Nos. 10137 and 18514 provide support for the position of the Carrier. Award 10137 involved the removal of old woven wire and installation of new woven wire on old fence posts with some new posts added. The central query in Award No. 10137 was whether such work constitutes new construction that was claimed by the B&B employees or rebuilding and repairing an existing facility. Since the work did not involve a new fence where none heretofore existed, the work was considered rebuilding and repairing an existing facility. Similarly, the work in question was the replacement of circuit bonds that were broken in the process of placing new rails on existing ties.

In Award No. 18514, the work involved the installation and wiring of a new track circuit relay in the instrument house. The holding in Award No. 18514 was that the work involved a new installation that had not previously existed. Accordingly, crossing divisional lines was not permitted because the work in Award No. 18514 did not come within the terms, "maintenance, testing and repair". By the same reasoning, the work in this case did not involve a new installation but replacement-in-kind which constitutes maintenance work.

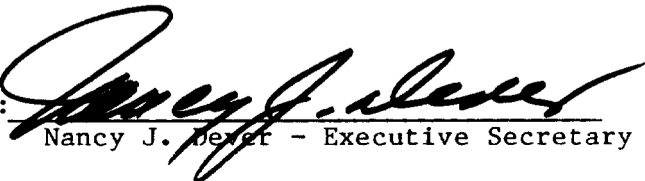
In light of the aforementioned considerations, the Board concludes that the instant claim is to be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.