

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation (Conrail))

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail) improperly failed to call District Lineman P. J. Blanchard to clear trouble on the dispatcher circuit at Mile Post 116.5, on the former Boston and Albany Railroad; and improperly assigned his work to others.

2. That, accordingly, the Consolidated Rail Corporation (Conrail) be ordered to additionally compensate P. J. Blanchard five (5) hours at time and one-half at the applicable District Lineman's 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 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.

Claimant was employed by Carrier as a District Lineman headquartered at Mile Post 150, in Pittsfield, Massachusetts. His regular tour of duty was 7:00 A.M. to 3:30 P.M., with Saturday and Sunday as rest days.

At approximately 4:45 P.M. on Tuesday, July 8, 1980, Carrier received a report that a storm had blown a tree down which was obstructing Track No. 1 at Mile Post 116.5. In response, Carrier dispatched an IBEW Communication Line Gang, which was on duty and working at Mile Post 104 at that time, in order to clear the track and make any necessary repairs to the communication lines. The Line Gang worked overtime on the assignment from approximately 5:00 P.M. to 10:00 P.M.

On July 23, 1980, Organization filed a Claim alleging that Carrier should have called Claimant to perform the assignment as per Article 8 - Special Instructions for Communications Department Employees, New York Central System, effective January 1, 1954. Specifically, said Claim alleged a violation of the job description for District Linemen regarding storm trouble. In its Submission, Organization jointly reads Appendix "C" 8 of the current Agreement, and Appendix No. 6, Rule 115(a) - Linemen's Classification of Work, and Rule 29 - Assignment of Work of the parties' January 1, 1948 Agreement, as revised, as establishing separate pay and seniority classifications for District Linemen and Gang Linemen. Moreover, Organization further contends that the January 1, 1954 Special Instructions, which is incorporated into the Agreement by reference by virtue of Appendix "C" 8, established the practice on this Carrier that District Linemen are to be notified in cases of storm trouble and are to be called first to diagnose the problem and clear the trouble on the Line. In this same regard, Organization also argues that the work of the Line Gang is basically construction not troubleshooting, which, according to Organization, is the type of work which is reserved to District Linemen; and which was the type of work involved in the July 8, 1980 assignment.

Organization's final significant area of argumentation is that the particular relief requested in the Claim (five [5] hours at time and one-half at the applicable District Lineman's rate) is reasonable, and further that Carrier has failed to prove its affirmative defense that an emergency existed on the day in question.

Carrier denies any wrongdoing in this case by affirmatively arguing that an emergency existed at Mile Post 116.5 on July 8, 1980. In support of this contention, Carrier cites the definition of an "emergency" which is contained in Second Division Award No. 157 which defines the term as "... a sudden condition calling for immediate action." In light of this definition, Carrier argues that a storm blowing a tree down onto the track entangling communication lines constitutes "a sudden condition calling for immediate action." Given that an emergency existed, therefore, Carrier further maintains that an established practice permits Management to utilize any resource at its command in order to restore operations in such a situation. This, according to Carrier, is the exact situation at bar since Management was faced with an emergency disruption in service at Mile Post 116.5 on July 8, 1980, and, in an effort to remedy this situation, Carrier dispatched the nearest on-duty employees (the Communications Line Gang) in order to restore operations.

Besides asserting an affirmative defense, Carrier further contends that the Claim is procedurally defective and, therefore, without merit since Organization failed to meet its burden of proving that a particular Rule violation occurred. In this regard, Carrier argues that it is unaware of any agreement or "special instructions" dated January 1, 1954, as cited by Organization in its argumentation. Furthermore, Carrier also argues that even if the special instructions did exist, which Carrier does not concede, Appendix C(1) of the May 1, 1979 Agreement, which is controlling in the instant case, terminates all previous agreements which are in conflict with the current contract insofar as they apply to the Electrical Craft.

Lastly, Carrier argues that Organization's remedy request is excessive and thus improper since "(T)here is no rule provisions in the ... Agreement which provide for payment of the punitive rate when no service is performed" (see Third Division Awards Nos. 3955, 7242, 9748 and 10990).

The Board has carefully read, studied and considered the complete record in this case and finds that Organization has failed to meet its burden of proving that a violation occurred as Organization asserts. While we believe the merits of the Claim to be questionable, since we are persuaded that a bona fide emergency existed at Mile Post 116.5 on July 8, 1980, Organization, more significantly, failed to incorporate the 1954 Special Instructions as a part of its handling of the case on the property. In accordance with our longstanding policy, therefore, the Board cannot consider the applicability of the Special Instructions at this time since said document was not made a part of the record on the property (First Division Award 18897, Second Division Award 4296, and Third Division Awards Nos. 5469 and 6657). Since we decline to consider the Special Instructions, for the reason(s) posited above, we must inevitably find that Organization has failed to state a Claim based upon an applicable contract provision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.