

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

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

Dispute: Claim of Employees:

1. Please consider this a time claim of four hours pay on March 28, 1983, on behalf of Electrician H. Phillips.

2. On March 28, 1983 Foreman Everett Allen ordered Machinists Steve Shelly, Ronney Tinker, and Apprentice Peterson to disconnect and connect leads of traction motors and motor generators of Unit 6003 stationed at the Back Shop, Erwin, Tennessee.

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 International Association of Machinists and Aerospace Workers was notified of this Claim as a potential party of interest. The International Association of Machinists and Aerospace Workers has provided a Submission for the Board's consideration.

The essential facts leading to this dispute are relatively clear and not at issue. Two Machinists and one Machinist Apprentice working in the Carrier's Erwin, Tennessee, facility removed a motor wheel set. In so doing, they disconnected and then reconnected electrical leads to traction motors and motor generators located on the unit on which they were working. It is this work that is being claimed here.

The Board has carefully reviewed the evidence and has considered the vigorous arguments of the Organization before us. After these deliberations, we find that the Claim must fail essentially because a substantive statement

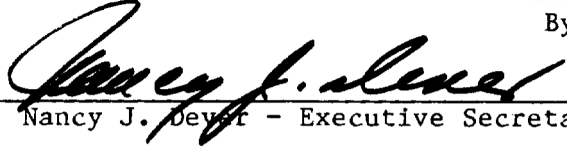
made by the Carrier on the property was not refuted during the handling of the Claim on the property. Here, the Carrier, in its initial denial of the Claim and throughout the progression of the dispute has stated that the work in question was properly covered by the National Incidental Work Rule. The Organization, on the property, did not refute the Carrier on this point. Accordingly, we follow a long line of Awards which have held that when material statements are made by one party and not denied by the other party, thereby leaving the contention standing as un rebutted, the material statements are accepted as fact, particularly when there is both the opportunity and the time to refute the contention.

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 2nd day of September 1987.