

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rules 32 and 122, when Foreman W. N. Wakefield, Jr. arbitrarily performed electricians' work i.e., to cut, make up consists, directional test, load test, dynamic brake test and make departure test on sixteen (16) locomotives on July 5, 1987, Green River Diesel Shop, Green River, Wyoming.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician Doug Hall in the amount of eight hours (8') at pro rata rate for July 5, 1987, as he was available to perform this work had he been assigned.

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.

As Third Party in Interest, the American Railway and Airway Supervisors Association was advised of the pendency of this dispute but chose not to file a Submission with the Division.

This case involves an electrician's claim to certain work allegedly performed by a foreman. The Claimant was employed as an electrician at the Carrier's Green River Diesel Shop in Green River, Wyoming, at the time this dispute arose. On August 4, 1987, the Organization filed a Claim on behalf of the Claimant for eight hours' pay because the Carrier allegedly had permitted a foreman to perform the following work,

"cut, make up consists, directional test, load test, dynamic brake test and make departure test on locomotives."

The Organization contends that this is work which is reserved to electricians and may not be performed by foremen or employees in other crafts. The Carrier contends that electricians have no exclusive right to this work and therefore denied the Claim.

The Organization has filed its Claim in part under Rule 32, which states in relevant part,

"Rule 32. Assignment of Work

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

At points where mechanics are employed, foremen may give instructions in the normal performance of their duties."

The Carrier does not argue that this was a point where no journeymen electricians were employed. Nor has there been an allegation that the work in question was instructional. Rather, the Carrier contends that the work was not reserved exclusively to electricians.

In support of its position, each Party relies upon Rule 122 of the applicable Agreement, which states,

"Rule 122. Classification of Electricians

Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon), axle lighting equipment, all inside telegraph and telephone equipment, electric clocks and electric lighting fixtures, winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards and on structures and all conduit work in

connection therewith, (except outside wiring provided for in Rule 123) steam and electric locomotives, passenger train and motor cars, electric tractors and trucks; include cable splicers, high-tension power house and substation operators, high-tension line men, maintenance of automatic train control, automatic cab signal equipment and all other work properly recognized as electricians' work."

(Emphasis added).

After careful consideration of the language of Rule 122 the Board concludes that it does not reserve to members of the Organization the right to the work in question.

As the Carrier argues, making up consists of locomotives is clearly not reserved to the electricians class under the Scope Rule. There is no language in Rule 122 which mentions cutting or making up consists. The language referring to locomotives reserves only the performance of electrical work on locomotives, which has not been established as the only or even a major component of making up locomotive consists.

The Organization has a somewhat stronger argument concerning the testing work it claims because the Scope Rule includes "inspecting...of all generators...motors and controls," and specifically the "maintenance of... automatic cab signal equipment." Apparently much of the testing work claimed relates to the automatic cab signal equipment.

However, the Board in this Claim sees no reason to diverge from its recent decision in Second Division Award 11615, involving the same Parties and Agreement, and generally the same issue. There this Board held that "testing" is not synonymous with "inspection," as that term is used in Rule 122. As the Board noted in that decision, the information provided to the Board regarding the procedures involved in performing these tests does not indicate that they involve working on any electrical wiring. As this Board understands it, "testing" as used in regard to the work in question means following a set of procedures to determine if the apparatus is working correctly. On the other hand, "inspection" of electrical wiring, as covered by the Scope Rule, suggests a more skilled analysis of an electrical problem, which might be necessary, for example, if the initial "testing" showed that there was an electrical problem with the apparatus.

Therefore the Board concludes, as it did in Award 11615, that the language of the Scope Rule is at best ambiguous with regard to whether this work is covered. The Organization argues, however, that Award 11615 is not controlling because it involved machinists, and not just foremen, performing work allegedly reserved to electricians. However, the reference to Rule 32 in the decision suggests that foremen were involved, and at any rate, the Board does not find that this factor affects the determination of what work falls under the Scope Rule.

The Organization also argues that a job duty may still fall within a Scope Rule even if the Rule does not contain the actual words describing the activity. The Award cited by the Organization, however, involved the actual cutting and removing of electrical wires. Second Division Award 6117. In contrast, there is no evidence here that the activities at issue in this case involved the actual handling of electrical wiring.

As the Board stated in Award 11615, when work does not clearly fall under the protection of a Scope Rule, the Organization bears the burden of demonstrating that the work has been performed exclusively, systemwide, by its members. As the Board noted in that decision, the fact that the Carrier has paid claims to Organization members at other times or locations is not dispositive, unless the Organization can establish a systemwide practice. Furthermore, it is impossible for the Board to determine, from the evidence presented in this case concerning the payment of other claims, whether the work involved there was identical to the work at issue here.

Here the Organization has provided substantial evidence, from statements from its members, and from other Organizations, that at least some of the work in question was performed by electricians predominantly and perhaps even exclusively, at this location. But this evidence does not establish that the work was performed exclusively systemwide by electricians. As the Carrier notes, our Award 11615 established that there was a mixed practice of mechanics and electricians performing the testing of the coded cab signal equipment at another Carrier location. This alone establishes that there was not a systemwide practice with regard to the testing work at issue here.

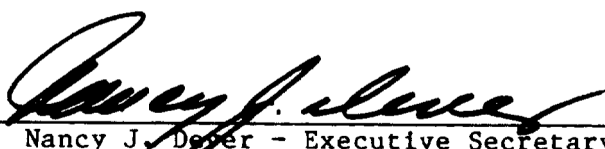
In addition, the Organization has not established in any way that members of its craft performed the work of cutting or making up consists exclusively, either systemwide, or even at this location. Therefore, the Organization has established no claim to the work at issue in this Claim through past practice.

Because the work is not clearly covered by the Scope Rule and because the Organization has not established a right to the work through an exclusive, systemwide past practice, the Board concludes that the Claim must be denied. In reaching this decision, the Board has considered the evidence in Carrier's Exhibit I. The Board finds that this information was presented on the property, and therefore is admissible under Circular No. 1.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1991.