

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13682

Docket No. 13471

02-2-99-2-67

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 16

PARTIES TO DISPUTE: (

(CP/Soo Line Railroad

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 28 and 2-EL (Soo) and 71 (Milwaukee) in particular, the CP/Soo Line Railroad assigned employees of the Bridges and Building Department to work which contractually belongs to the Mechanical Department electricians.
2. That accordingly, the CP/Soo Line Railroad be directed to compensate Mechanical Department Electricians and Bridges and Building Electricians Joe Shark, Jack Sczarniak, Jerry Zalecki, Al Kennedy, Terry Schmidt, Moses Marks, Marvin Gibbons, Al Holman, and Alex Sievsky for two hundred forty (240) hours at the overtime rate of pay to each of the above named electricians.”

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 employee 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 were given due notice of hearing thereon.

The claim dated October 16, 1997 asserts that beginning on or about July 28, 1997 and concluding the first week of September 1997, employees of the Carrier's Bridges and Buildings Department Crew 47D removed old light fixtures and installed new light fixtures which work included mounting new light fixtures, installing conduit, pulling wire and installing boxes in the Carrier's Bensenville, Illinois Diesel House. The record discloses that Claimants Sczarniak and Shark are B&B Electricians and performed the work. The record further discloses that B&B Crew 47D which also performed the work consisted of non-electrical forces.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

The first question to be addressed is the Carrier's contention that the claim is untimely under Rule 35(a). We disagree.

Rule 35(a) provides in pertinent part:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . ."

The claim dated October 16, 1997 protests a disputed work assignment "[b]eginning on or about July 28, 1997. . . ." Under Rule 35(a), "60 days" from July 28, 1997 is September 26, 1997, thereby, at first blush, making the October 16, 1997 claim untimely. However, the "occurrence on which the claim or grievance is based" was a continuing one. Alleged "continuing" violations of the Agreement (as opposed to a single isolated and completed transaction) lead to "continuing" claims because the act complained of is repeated from day to day. Every day an alleged violation continues results in a new "occurrence." A work assignment such as this which lasted over a period of time is therefore a "continuing" alleged violation of the Agreement. According to the claim, the disputed assignment concluded "the first week of September 1997." The October 16, 1997 claim was therefore filed within the 60 day period required by Rule 35(a). In that sense, the claim is timely. Compare Third Division Award 33967

(holding a claim untimely under a 60 day filing requirement because "... the protest is over a singular act - the Carrier's failure to advertise a vacancy within 30 days").

However, because a continuing claim is found to be timely filed does not mean that periods beyond the 60 days prior to the filing of the claim are to be remedied. There is no reason indicated in this record why the Organization could not have filed the claim within 60 days of the original assignment to B&B Crew 47D. Therefore, the Carrier's liability, if any, shall be limited and shall commence 60 days prior to the filing of the claim. Periods covered by the claim more than 60 days prior to its filing shall be excluded from any remedy.

With respect to the merits, the failure to assign the disputed work to Electricians clearly violated Rule 71:

"Rule 71 - Classification

Electricians' work shall include electrical wiring, maintaining, repairing, inspecting and installing of all ... electric lighting fixtures ... inside and outside wiring at shops, buildings ... and all conduit work in connection therewith. ..."

B&B Crew 47D removed old light fixtures and installed new light fixtures which work included mounting new light fixtures, installing conduit, pulling wire and installing boxes in the Carrier's Bensenville, Illinois, Diesel House. Under Rule 71, that is Electricians' work. In light of that determination, the parties dispute over whether Rules 28 and 2-EL (Soo) also apply is a moot question.

With respect to the remedy, we earlier indicated that although the claim was a continuing one, the Carrier's liability shall be limited to commence 60 days prior to the filing of the claim. The matter is therefore remanded to the parties to compute the number of hours of actual assigned work to Crew 47D consistent with that limitation on the Carrier's liability. Further, because two of the named Claimants performed the work, the hours of work performed by those individuals during the relevant period shall also be deducted from the Carrier's liability. The Claimants shall be made whole consistent with those computations.

The fact that the other Claimants may have been working during the relevant period does not further limit the Carrier's liability. For the period of determined liability (i.e., 60 days prior to the filing of the claim), the Claimants lost work opportunities (indeed, perhaps overtime opportunities) when the work was misassigned to non-electrical forces on B&B Crew 47D. The Claimants must be made whole in accord with the terms of the Agreement for that loss.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of April, 2002.