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Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13974

Docket No. 13828

08-2-NRAB-00002-060031

06-2-31

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

(International Brotherhood of Electrical Workers

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rule 88 and Appendix No. 5, Article No. V of the September 1, 1974 controlling Agreement in particular, the BNSF Railway Company assigned machinists to perform work historically performed and commonly recognized as work assigned to Electricians represented by this Organization.**
- 2. That, accordingly, the BNSF Railway Company be ordered to compensate Electrician M. S. Coon three (3) hours and ten (10) minutes pay at the punitive rate of pay.”**

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.

In this Claim the Organization contends that Carrier's actions in removing Electrician M. S. Coon from his assigned work of disconnecting traction motor leads and reassigning that work to members of the Machinist Craft violated the Parties' applicable rules defining work exclusive to the Electrician Craft.

According to the record before the Board, on June 6, 2005, Journeyman Electrician M. Nudson was in the process of disconnecting traction motor leads from six (6) traction motors on Unit BNSF 6899 at the Argentine facility at Kansas City, KS in preparation for replacing a center casting. Carrier Manager J. Canzonere broke off that assignment, directed Nudson to leave the area and informed him that the work would be completed by four Machinists. This Claim ensued on July 28. After handling on the property in the usual fashion including appeal to Carrier's highest designated officer, it came before the Board for final disposition.

The record indicates that the locomotive being worked on had two large cast truck frames, each containing three traction motor/wheel assemblies. In the center of each truck frame were round, 18 inch diameter female pockets. On the locomotive were two round steel male castings which, when placed on the truck frame, allow the locomotive to pivot as it negotiates curves and turns in the tracks.

In order to repair the center casting wear plate--a plastic/fiber composite disc—the locomotive must be lifted off the truck frame and the disc removed. After cleaning the pocket and installing the new disc the locomotive is then set back onto the trucks. The entire task, according to the Organization, takes approximately one hour or less. However, before the locomotive may be lifted it must be secured and a number of ground straps, power leads, cables, hoses and other items must be disconnected. That work, normally performed by electricians, in this instance was performed by machinists who spent three hours and ten minutes disconnecting and

reconnecting twenty-four high voltage traction motor cables as well as all related insulating rubber boots, clamps and mounting support brackets.

The Organization argues that Carrier's reassignment of the work in dispute was a blatant violation of Rule 88 of the Agreement and wholly inconsistent with recognized past practice. Reliance on Rule V – Incidental Work Rule, the Organization maintains, is thus misplaced. As has been held by other Boards in similar circumstances, that Rule sets an outside time limit of two hours for the performance of a simple task. Since the Organization has presented specific facts and supported each of its contentions with reliable proof, the Board must sustain the employee's position and award the relief claimed.

Carrier takes sharp exception to the Organization's vision. First, as is apparent from the evolving nature of the incorrect and incomplete information provided in the initial claim, later modified during the appeal process, since the work in question potentially involves the rights of IAM-represented Machinists, that union must be given notice of this dispute before any ruling favorable to the IBEW may issue. Secondly, the issues raised by this dispute, Carrier argues, have been heard and decided adversely to the Organization numerous times. Further, the work claimed has been specifically addressed by Act of Congress. Thus, if there was a legitimate issue at one time, it is abundantly clear that disconnecting/connecting motor leads in this context is no longer the exclusive work of the Electrician Craft.

According to Carrier, while it does not deny that Electricians are assigned to this work on occasion, the work performed by the Machinists here was incidental to the task of repairing the center casting on locomotive BNSF 6899. Based upon its experience with such operations in the past, and recognizing that the required repairs usually take several hours, Carrier correctly assigned the incidental work of disconnecting and reconnecting the wiring to the Craft that was performing the main task.

Nothing in the Agreement, it argues, prevents the delegation of such work. The Classification of Work Rule does not even mention this work, let alone reserve it to Electricians. Connecting and disconnecting leads is work performed at various locations, including the Argentine facility where the claim arose but also at Los Angeles, Richmond and Barstow, CA, Belen, NM and Topeka, KS. Exclusivity at

Argentine is not enough--no evidence of any system-wide assignment of this work solely to electricians has been shown. Thus Carrier had the right to assign this work to Machinists based upon Article V – INCIDENTAL WORK RULE allowing it to assign incidental tasks to the Machinists working on the main tasks of repairing the center casting, in the process of which the wiring between the locomotive body and wheel assembly had to be disconnected. Such work is plainly incidental work under the governing Rule.

Article V – INCIDENTAL WORK RULE provides in pertinent part:

“Section 1

The coverage of the Incidental Work Rule is expanded to include all shopcraft employees represented by the organization party hereto and shall read as follows:

Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of “incidental work” (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as “incidental” when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours pr shift. Such hours are not to be considered when determining what constitutes a ‘preponderant part of the assignment...’

Rule 88 – ELECTRICIANS CLASSIFICATION OF WORK provides in part:

“(a) Electricians work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting, automatic train control electrical equipment, radio equipment on locomotives and cars, electric clocks and electric lighting fixtures, winding armatures, fields, magnet coils, rotor transformers and starting compensators; inside and outside wiring at shops, building, yards, and on structures, and all conduit work in connection therewith, including steam and electric locomotive, passenger trains, rail motor cars, electric tractors, and trucks. Electric cables, cable splicers, high tension power house and sub-station operator, high tension linemen, electric crane operators of 40-ton capacity or over; and all other work generally recognized as electricians’ work...”

Based upon these plain terms, the Board concludes that the parties did not contemplate that Electricians would enjoy an unqualifiedly exclusive right to perform the work at issue. On the contrary, work is definitionally ‘incidental’ when it involves “the removal and replacing or the disconnecting and connection of Parts and appliances such as wires...”, and accordingly when such work is incidental to the center casting repair it may be done by Machinists under Rule V. Clearly, even if there had been a showing here that disconnecting and connecting leads and cables was being performed by the Electrician Craft on a system-wide basis, Article V sets forth an exception to any claim of exclusivity under the narrowly defined circumstances: The disputed work may be performed on an incidental basis when the time required to perform it does not exceed the time normally taken to complete the main task.

Thus, the substantive issue presented is narrow and straightforward. What compounds the problem here are the underlying factual disputes over both the time it normally took to accomplish the main task and the time it actually took members of the Machinist craft to accomplish the work claimed.

The Claim was prepared and advanced with considerable care on the property, with the Organization calculating the Electrical Craft work completed by Machinists at three hours, ten minutes. Carrier challenges those times, pointing out that the time the Organization ascribes is skewed and its methodology is suspect since it does not allow for numerous Machinist tasks in preparing adjusting, setting jacks, lifting, inspecting, recording clearances and other work that generally arises when lifting and repairing center castings.

Even if that very basic fact dispute is resolved favorably to the Organization, however, a finding of Rule violation would in these circumstances require the Board to close our eyes to two other significant aspects of the governing Agreement terms. First, the Organization's case starts to take on water when it is considered that Carrier maintains without challenge that repairs to center castings *normally* take several hours in total. Thus, disconnecting and reconnecting of wires here would normally be a minor part of the main repair work. Article V makes "the time *normally* required" the test for determining whether the nature of the work is "incidental."

Second, Article V sets forth a specific process for resolving the type of fact dispute imbedded in the question of how much time the work actually took:

"If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question: however, the Shop committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main assignment. If it does, a claim will be honored..."

Although it is apparent that the Parties view through different prisms the question of what was “normal” time for center casting repair and whether the work here offended the concept of incidental work, the deadlock-breaking mechanism the Parties themselves have agreed to use for fact-finding in such cases was bypassed. The only explanation advanced for that failure that “everyone knows how long it takes.”

By not addressing Carrier’s contentions that the central repair work normally took only a few hours, and by not complying with the provisions of the Rule requiring that the work be timed in questionable cases, the Organization puts the Board in an untenable posture. It forces a quasi-appellate forum to make findings of fact on that critical issue, an exercise beyond our jurisdiction. Similarly, without the time study mandated by the Rule, a process obviously designed to avoid exactly this situation, the Board is compelled to engage in determining disputed facts. With no reliable basis for finding either what was normal repair time or how much time was actually consumed in this instance, the Board must dismiss the Claim for failure of proof and failure to exhaust administrative remedies.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of November 2008.