

Award No. 815

Docket No. 771

2-N&W-EW-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L, (ELECTRICAL WORKERS)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, Electrician M. C. Wilson be compensated for thirty-two hours at rate and one-half for electrical work performed by Electrical Worker Helper W. H. Jones from 7 A. M. to 3 P. M. on November 25, 1941, January 8, 9 and 10, 1942.

EMPLOYEES' STATEMENT OF FACTS: At Radford shops, W. H. Jones is regularly employed as an electrical helper on the first shift from 7 A. M. to 3 P. M. He is carried on the electrical worker helpers' seniority roster and is paid the regular helpers' rate.

Electrician M. C. Wilson is regularly employed at Radford shops on the second shift, from 3 P. M. to 11 P. M.,

Electrical Helper W. H. Jones was used in the capacity of an electrician from 7 A. M. to 3 P. M., first shift, on November 25, 1941, January 8, 9 and 10, 1942, and for which service Jones was paid the electrician's rate.

POSITION OF EMPLOYEES: We contend that management violated Rules 71 and 31, in controlling agreement in using W. H. Jones, electrical helper to perform electrician's work from 7 A. M. to 3 P. M., first shift, November 25, 1941, January 8, 9 and 10, 1942, when M. C. Wilson was available for work. M. C. Wilson formerly worked first shift and was assigned to second shift on request of management. We further contend that it would have been no more trouble for management to have called M. C. Wilson, electrician, to perform electrician's work at Radford shops that rightfully belong to electricians, than it was to rate up an electrical helper to perform the work; therefore, we know of no other reason of violating Rules 71 and 31 of controlling agreement, other than to keep from paying the time and one-half rate. We further contend that Rule 31 is very plain wherein it reads as follows;

"None but mechanics, apprentices, hourly rated gang leaders and shop hands shall do mechanics work as per special rules of each craft."

W. H. Jones is carried on the helper seniority roster, therefore, has no rights under any rule of controlling agreement, effective July 15, 1938, to perform electrician's work; and to confirm same there is submitted a copy of the seniority roster of electrical worker helpers at Radford shops.

have prevented the use of Mechanic Jones, who, although a mechanic, is **not regularly employed as such**. This Division so held in Award 567. The carrier rejected the proposed rule because it did not permit the use of a qualified helper to do mechanic's work (when mechanics were unavailable), by paying the helper at the mechanic's rate of pay.

The carrier offered the present rule in the current agreement quoted above in pertinent part, as Rule 31. It was accepted by the employees. Contrary to an unbroken practice since the agreement was made, the employees now prosecute this claim as though the original rule proposed by them had been adopted.

The Carrier requests that the claim be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

It is conceded that Electrical Worker Helper Jones performed electrical work on the dates involved. The carrier contends that, in contemplation of Rule 70 he was qualified to do electrical work. Conceding that he was so qualified, he was none the less an electrical worker helper under the agreement and, therefore, he could not be properly assigned to do electrical work.

The Division is of the opinion, however, that, under the facts disclosed by the record, it cannot be said that claimant Wilson was available for the work performed by Helper Jones on November 25. On the other hand, the Division is of the opinion that claimant Wilson was available for the work performed by Helper Jones on January 8, 9 and 10, 1942, notwithstanding that he (Wilson) worked his regular shift on those dates.

AWARD

Claim denied as for November 25, 1941.

Claim sustained as for January 8, 9 and 10, 1942.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1942.