

Award No. 1081

Docket No. 993

2-B&M-EW-'45

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That the replacement of high tension electric trolley wires in the Hoosac Tunnel is electrical workers' work within the meaning of the controlling agreement.

2. That during the months of February, March and April, 1943, the carrier violated the controlling agreement, particularly Rules 26, 97, 98 and 131, by having improperly assigned the employes listed in the statement of facts to perform the aforesaid work, thereby damaging the employes of the electrical workers' craft regularly employed as such.

3. That in consideration of the aforesaid, the carrier be ordered to additionally compensate by equally distributing at the applicable overtime rates for each man-hour worked on the renewing of the high tension electric trolley wire, by having improperly assigned the employes listed in the statement of facts between the following engineering department electrical workers:

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|--------------------|----------------------|
| 1. Sidney Rowell | 9. Paul Carroll |
| 2. Charles Carroll | 10. Edward Heffernan |
| 3. George Oldford | 11. Ted Croteau |
| 4. Andrew Davidson | 12. Edward McDermott |
| 5. Daniel Ahern | 13. Fred Kane |
| 6. Robert Kehoe | 14. Antonio Rea |
| 7. William Merry | 15. Robert Gribben |
| 8. Colin McCellan | |

EMPLOYEES' STATEMENT OF FACTS: The following listed employes, who are not qualified in accordance with the provisions of Rule 97 (Electrical Workers' Qualification Rule) of the agreement, were assigned by the carrier to perform work coming within the provisions of Rule 98 (Electrical Workers' Classification of Work Rule; namely: the replacement of high tension electric trolley wire in the Hoosac Tunnel; although the division engineer had been advised that such action would be in violation of the agreement and the chief engineer had been requested to discontinue such action after the work had been started. The work was performed between February 1, 1943 and April 30, 1943.

The improper employes and the days and hours which they were assigned to work to the detriment of the claimants are as follows:

tions to be filled were advertised for bids. No bids were received. In order to complete the work, men familiar with Hoosac Tunnel were used as groundmen and linemen, doing unskilled and semi-skilled labor. The men named in the notice of claim could not properly do the work. The men used were not outsiders, but were Boston and Maine employes assigned to that special work. No man lost one hour's straight pay; no man lost a day's work. The claim is without merit and should 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 employe or employes involved in this dispute are respectively carrier and employe 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.

This docket involves the current agreement on the same railroad between the same parties as in Award 1042 of this Division. Speaking through Judge Rudolph as referee, this Division in Award 1042 said:

"We are of the opinion that the facts disclose a technical violation of the agreement. However, it is not every such violation that justifies sustaining a claim for compensation. See Third Division Award 1453 . . . While the job was not an emergency, nevertheless, it was such that its prompt completion was essential. During the time this work was in progress all employes were working full time, and many were working overtime. We are convinced, therefore, that there was no intention by the carrier of depriving employes under the contract of any work. The act of the carrier was a good faith attempt to have essential work performed with reasonable dispatch, under adverse labor conditions. Better practice would undoubtedly have been for the company officials to have consulted the organization, but under the facts presented by this record, we are unable to determine that the failure to so act resulted in loss to the claimants."

AWARD

There was a violation of the agreement, but under the facts presented it was not such as will justify the claim for compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.