

Award No. 1120

Docket No. 1021

2-B&M-EW-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter 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 classification of work rules, particularly Rule 99, for electrical workers includes within its scope the inspection of poles used at the passenger stations for the lighting units, wires and fixtures.
2. That the carrier violated, and is violating, the agreement by assigning the inspection of these poles to other than electrical workers.
3. That, in view of the aforesaid, the carrier be ordered to assign the inspection of these poles to electrical workers.

EMPLOYEES' STATEMENT OF FACTS: At nearly all of the passenger stations on the Boston and Maine Railroad the carrier uses lighting fixtures attached to poles for the purpose of lighting the platforms. Wires from the passenger station run on insulators attached to the poles and connected to the wires which supply the station lighting current. The poles are set in the platform or adjacent thereto. Standard lighting fixtures are attached to the poles and connected to the wires which supply current from the station. Electrical workers, regularly employed as such, install, maintain, repair and replace all of these poles, pole lines, street fixtures and other attachments. These poles are used solely for the purpose of providing electric lighting for the passenger station platforms and to carry the necessary lines to provide the current. The carrier is assigning other than electrical workers to inspect these poles for rot or other damage which may require their repair or replacement.

POSITION OF EMPLOYEES: There is no denial by the carrier that employees other than electrical workers, regularly employed as such, are being assigned to perform the necessary inspection of the poles which are used solely as a part of the electrical equipment for the lighting of the passenger station platforms. Electrical workers are assigned to make any necessary inspections of all other electric poles used by the carrier. The carrier has thus recognized that the inspection of poles, which are a part of pole lines, is a proper part of the maintenance of such pole lines. The poles involved in the instant case are used only for electrical purposes, they carry the wires and the street fixtures which are used for lighting the passenger station platforms.

There is another strong objection to allowance of this claim. The claim is barred by lapse of time. Rule 29 of the agreement between System Federation No. 18 and the Boston and Maine Railroad provides:

"Should any employee believe he has been unjustly dealt with or the provisions of this Agreement have been violated, he shall have the right to take the matter up with his foreman in person or through representatives of his own choice within seven days."

No protest was made on this matter from at least 1930 down to the fall of 1943. As a matter of fact no instance is cited by the committee of any time when the work was done by bridge and building employees rather than by linemen. No grievance is expressed in the claim as presented to the Board. The committee has merely presented the Board with a request to write a new rule by interpretation and thereby change a practice of at least 14 years' standing.

The statement of claim as filed by the committee is not properly a claim. It is a request to include in the rules something that was specifically excluded from the rules. In the third numbered paragraph of the statement of claim, they state what they ask the Board to do, namely:

"That in view of the aforesaid the Carrier be ordered to assign the inspection of these poles to Electrical Workers."

No grievance has been submitted, as it is commonly known. No one has claimed pay for work done by bridge and building men in the inspection of poles. The attention of the Board is not called to any specific instance where the inspection was done by improper people. Therefore, the claim is nothing but a request that the rules be amended.

It is submitted that the Board is without authority to write a new rule into the book and that in the absence of a rule specifically stating that the inspection of poles is an electrician's or a lineman's job, there is no basis for an award in this case.

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 waived right of appearance of hearing thereon.

The inspection of poles used at passenger stations, for the lighting units, wires and fixtures is work belonging under the provisions of Rule 99 to electrical workers. Giving such work to employees of the Bridge and Building Department was a violation of the rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1946.