

Award No. 1550
Docket No. 1453
2-Pull.-EW-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electricial Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the curent agree-
ment, particularly Rule 5 (b) thereof, the inspection of electrical equipment
on the inside of Pullman cars is classified as Electricians' work.

2. That since about March 10, 1949 the Pullman Company has used
assistant foremen or supervisors to perform the aforementioned inside
electrical inspection work.

3. That accordingly the Pullman Company be ordered to:

(a) Cease using supervision to perform the aforesaid work.

(b) Restore said inside electrical inspection work to the
Electrical Workers' Craft where it inherently and contractually
belongs.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, here-
inafter called the carrier, issued written instructions under date of January
15, 1948 that the daily inside electrical inspection of Pullman cars for the
electricians would consist of the following items:

26. Check lights, fixtures, bells, electric door closers, blow
and exhaust fans and auxiliary blowers .

27. Check razor converter.

28. Check trainline and call bell connector.

29. Operate all grille and damper controls.

30. Check operation of remote controls, zone heat.

31. Check operation of thermostatic heat control switches.

32. Check operation of electric water cooler and circulating
water pump.

"We agree with the parties that the matter in dispute is not within the current agreement. It is not within the jurisdiction of this Board to either make, or amend, or nullify, agreements duly executed by a carrier and its associated employees. This limitation of the Board is bottomed upon the right of freedom of contract, sound principles of jurisprudence, and common sense. The Board has no authority to read into a contract that which its makers have not put there expressly, or by clear implication. The Board has said so many times. As noted in Award No. 5288, page 3 (1st Division, Hon. Edward F. Carter, Referee), the Board has no power to rewrite the contract or to relegate to itself the powers and duties of the parties. And in Award No. 5396, page 8, (1st Division, Hon. Robert G. Simmons, Referee): 'In the absence of rules clearly establishing the right it will not be held that the carriers and employes contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employes over a long period of time supports the position taken by the carrier in the construction of the cited Rules.' Of course, repeated breaches do not abrogate a clearly expressed contract provision, but where the contract is silent, or the meaning of a provision is not clear, the long-continued practice of the parties is most persuasive proof that the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

The company submits that the instant claim should be denied for the following reasons:

1. The practice complained of does not violate any rule of the working agreement between The Pullman Company and its electrical workers.
2. The requirement that supervisors perform a general inspection function as part of their duties is in conformity with the practice of many years' standing, which practice was not abrogated by the current working agreement or by any other agreement.
3. Awards of the National Railroad Adjustment Board clearly establish that where a contract has been negotiated and existing practice is not abrogated or changed by its terms, such practices are valid.
4. The claim is before the Board without first having been progressed on the property of the company.

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.

The electrical workers of System Federation No. 122 contend the company violated the scope of its agreement with them when it had employes not covered by their agreement perform the work of inspecting electrical equipment on the inside of Pullman cars. They ask that this work be restored to their craft.

The company contends we should dismiss the claim because it was not handled on the property in accordance with the rules of the parties' controlling agreement as The Railway Labor Act and the rules of this Board provide it should be. The question involved in the dispute was brought to the company's attention by the filing of three separate claims. Every step was taken and every opportunity was provided for settlement thereof on the property in accordance with the effective provisions of the parties' controlling agreement. We find the handling of this dispute on the property fully met the requirements of The Railway Labor Act and the rules of this Board, which make a proper handling on the property a prerequisite to bringing a dispute here. In view thereof we find this contention to be without merit.

We find the company's contention that it has long been an established practice to have yard supervisors generally inspect all incoming and outgoing Pullman equipment, which would include inspecting the electrical equipment on the inside of Pullman cars, to be true. This is done to make sure that the cars enter road service in proper condition. While Rule 5 (b) of the parties' controlling agreement includes "testing" and "inspecting" of the various classes of equipment therein set out, we do not think it covers the "supervisory inspection work" which is here involved. This "supervisory inspection work" has been performed by yard supervisors over a long period of time and is a practice that a rule would have to expressly cover in order for it to abrogate the company's right to continue it in effect. Such is not the express language of Rule 5 (b), nor do we think that such was its intended meaning.

Whenever the company desired a more thorough inspection of the electrical equipment used in Pullman cars than a "supervisory inspection" would accomplish, such as evidenced by items 26 to 32 inclusive of its instructions of January 15, 1948, it properly, within the meaning of Rule 5 (b), had it performed by the craft covered thereby.

Beginning on January 15, 1948 such an inspection was ordered to be made on a daily basis. Subsequently, on March 10, 1949, this was changed to a semi-monthly basis. Still later, on July 6, 1951, it was changed to a weekly basis. This change the company had a right to make for it could determine the extent to which inspections should be made. But having it done on one basis for a period of time did not prevent it from having it done on a different basis at another time. In other words, the electricians do not have the contract right thereto when the company has it performed on a "supervisory basis." We find nothing in the record to indicate that yard supervisors are now doing anything different, when making a general inspection of incoming and outgoing Pullman cars, than has been their practice over a long period of time. In view of that fact, and what we have already said about the language of Rule 5 (b), we find the company had a right to have the yard supervisors continue to make such general inspections, which would include the electrical equipment on the inside of Pullman cars.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1952.