Award No. 1622

Docket No. 1513

2-PULL-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement was violated when Cincinnati Union Terminal Electricians were assigned on July 8, 1951 to test and inspect the air conditioning equipment; also to remove, clean and re-apply the expansion valve strainers to Pullman Car St. Clair.

2. That accordingly the carrier be ordered to:

a) Discontinue the use of other than Pullman Company Electricians to perform electrical work on Pullman equipment.

b) Compensate Pullman Company Electricians E. Kemper and H. G. Kyde each in the amount of 2 hours and 40 minutes compensation at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Sometime after 6:00 P. M. on July 8, 1951, at least two electricians employed by the Cincinnati Union Terminal Company were assigned to test and inspect the air conditioning equipment; also to remove, clean and re-apply the expansion valve strainers to Pullman Car St. Clair.

Pullman Company Electricians E. Kemper and H. G. Kyde were available to perform this work on July 8, 1951, if called.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that Rules 2, 5(b) and 37 of the current agreement were violated when other than Pullman Company

In this dispute, the organization apparently refuses to concede that the issue in question properly should be considered on the basis of whether or not a Pullman electrical employe was deprived of any work because Cincinnati Union Terminal employes made an inspection unauthorized by The Pullman Company and unsuccessfully attempted to remedy the condition. In support of this position, Mr. McDermott contended that he could not agree that no Pullman electrician was deprived of work inasmuch as the agreement provided that Pullman electrical workers are entitled to make the test on air conditioning equipment, not Terminal employes. Clearly, the organization is ignoring the fact that tests were made by Pullman electricians and that the work in question was performed by Pullman electricians. The fact that Terminal employes made unnecessary and unauthorized attempts to locate the trouble cannot be construed as resulting in any "deprivation" of work belonging to Pullman electricians.

CONCLUSION

In this dispute, the company has shown that there has been no violation of Rule 5 of the agreement in connection with the testing and repair work performed on car ST. CLAIR because of a failure in cooling equipment on July 8, 1951. Further, the company has shown that Rule 33 is not applicable to this dispute inasmuch as the rule relates solely to instances where Pullman employes are called to perform certain work. The rule is silent on the compensation an employe is due when the company fails to call him to perform work allegedly due him. The record in the instant case is persuasive of the fact that in the emergency arising in Cincinnati on July 8 the company acted in a reasonable and logical manner. All the necessary testing and repair work on car ST. CLAIR was performed by Pullman electricians. It was the company's opinion that when another car was placed in the line and car ST. CLAIR was taken to the yards that the temporary emergency was satisfactorily settled. The fact that Cincinnati Terminal electricians later made an unauthorized inspection of car ST. CLAIR and attempted to repair the cooling equipment when no Pullman electricians were on duty is without significance. On August 9, Pullman electricians tested the cooling equipment and made the necessary repairs on the car.

Finally, even if the unauthorized testing and work performance on car ST. CLAIR should not have been made by Union Terminal electricians, the company is unable to understand why the organization is requesting 2:40 hours in behalf of Electricians Kemper and Kyde at the rate of time and one-half instead of at straight time rates.

In view of these facts, the company submits that the instant 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.

On July 8, 1951 at 4:00 P. M. Pullman Car St. Clair arrived in the Cincinnati Terminal in B. & O. Shrine special train, with its cooling equipment out of order. After Pullman electricians had found it impossible to repair this equipment in the station, the car was cut out of the train and sent to the yards. At about 6:00 P. M. of that day B. & O. Railroad officers asked two or more Terminal electricians to work on the car. The latter were unable to correct the trouble. Two Pullman electricians were available in the yards

for such work until 11:00 P. M. on July 8th. The next day (July 9) Pullman electricians worked on the car and satisfactorily repaired the faulty cooling equipment.

The carrier agrees that the work performed on the cut-out car by the Terminal electricians properly belonged to Pullman electricians. It contends, however, that (1) its violation of Rules 2 and 5 of the parties' agreement was wholly technical; and (2) it should be absolved of penalty therefor because (a) it did not authorize the Baltimore & Ohio Railroad to use Terminal electricians on the evening of July 8, (b) it did not know that the Railroad was going to use such electricians, and (c) no Pullman electricians were actually deprived of work thereby, in view of the unsuccessful efforts of the Terminal electricians to locate and repair the trouble.

In determining this dispute we are guided by the principles and reasoning set forth in our Award 1601, as applied to the facts of the instant case. We find that the work performed on car St. Clair on July 8, 1951, by Terminal electricians did in fact belong to Pullman electricians. We do not find that The Pullman Company should be absolved of penalty for this violation of Rules 2 and 5. We think it reasonable to expect this carrier to have developed arrangements with railroads and terminals so that it would not find itself in the position of having violated its agreement with the organization. It may well be that the carrier did not know about the use of Terminal electricians on July 8th; the organization has not succeeded in establishing such knowledge. But it does not appear unreasonable to believe that such matters can be brought to the carrier's attention and subject to agreed-on controls. And if the instant violation could have been made subject to such controls, we cannot absolve the carrier of responsibility and penalty.

It appears that the repair work was such as to require the use of at least two electricians. Accordingly we allow the claim in respect to both of the employes named by the organization. And we allow each such employe the requested time of two hours and forty minutes. But for the reasons given in our Award 1601 we grant compensation for this time only at pro rata rates.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January, 1953.