

Award No. 1688

Docket No. 1575

2-PULL-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly assigned other than Pullman Company electrical workers to repair the enginator unit which was removed from Pullman Car FIREBRAND PASS.

2. That accordingly the carrier be ordered to discontinue using other than Pullman Company electrical workers to perform this work and compensate Electricians E. Bradford, A. Johnson, W. Kaleta, J. Karpierz, W. Leo, E. Provost, I. Rosenfeld, P. Smith, P. Svoboda and D. Wilson in the amount of sixteen (16) hours at the time and one-half rate for each claimant.

EMPLOYEES' STATEMENT OF FACTS: On October 7, 1951 enginator unit #42506 was removed from Pullman Car FIREBRAND PASS and given to the C. B. & Q. Railroad to be repaired. This enginator unit was repaired and returned to The Pullman Company on October 18, 1951.

Due to staggering of work week assignments the claimant Pullman Company electrical workers were off on rest days during the period from October 7 to October 18, 1951 and were available to perform this work if called.

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

POSITION OF EMPLOYEES: It is submitted that action of the carrier in the instant dispute is contrary to the provisions of the current agreement when they gave the enginator unit #42506 to the C. B. & Q. Railroad to be repaired, when Rule 2, first paragraph, provides:

"Assignment of Work.

None but journeymen or apprentices employed as such shall perform the work outlined in Rule 5 of this Agreement."

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

1. No rule of the working agreement contains any provision that precludes the company from proceeding in the manner found here.
2. The company has assigned Pullman electrical workers to perform all work in connection with Pullman cars to which they are entitled.
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 as valid and enforceable as the written provisions of the contract itself.

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 October 7, 1951, it was discovered that the Waukesha Diesel enginator in Pullman car FIREBRAND PASS was out of order. It was removed from the car by Pullman electricians and turned over to the Chicago, Burlington & Quincy Railroad for overhauling. Claimants contend the work of overhauling enginator belonged to Pullman electricians and they ask to be compensated for the work lost.

The Organization relies upon Rule 5 (b), current agreement, wherein it is said in part:

“Electricians’ work shall include electric wiring, . . . ; maintenance of all air conditioning systems in their entirety including Waukesha and Diesel engines;”

The record discloses of the following pertinent facts: The enginator here involved was removed from Pullman car FIREBRAND PASS, a new light-weight sleeping car used exclusively on the “Empire Builder” of the Great Northern Railway between Chicago and Seattle. By some sort of joint agreement not made clear in the record, the “Empire Builder” was operated by the Great Northern and Chicago Burlington & Quincy railroads. The equipment of the train, including sleeping cars, is owned by the railroad companies. The sleeping cars are leased to the Pullman Company who operate and, to the extent agreed upon, maintain them. We point out that the enginator here involved is usable only on the “Empire Builder” but it is interchangeable on coaches, dining cars and sleeping cars. It appears that it was agreed by the Pullman and railroad companies before the “Empire Builder” was put in operation that maintenance items common to coaches, dining cars and sleeping cars would be stocked in Chicago by the Chicago, Burlington & Quincy and in Seattle by the Great Northern. The actual maintenance of air conditioning systems was assumed by the Pullman Company and the railroads assumed the cost of repairs. The carrier shows that it has been the practice to have Pullman employes remove enginator units from sleeping cars and turn them over to railroad employes for overhauling. It contends that Pullman employes were entitled to the maintenance of enginators only when it could be done without removal from the car. This was said by the carrier to be in accordance with its contract with the Chicago, Burlington & Quincy Railroad. We have found no such contract in the record.

Difficulties are presented in determining to whom work belongs when it became involved in complicated agreements between two or more carriers. In the present case, the sleeping cars are owned by one or both railroads involved. They are leased to the Pullman Company under terms governing the maintenance of such cars. The general rule is, of course, that when a carrier contracts with a craft for the performance of designated work, it means all of such work in the absence of restrictions. In the present case, the electricians have a contractual right to perform all the work given them under the agreement whether it arises out of the ownership of the property by the carrier or a contractual obligation on the part of the carrier to perform it. Whether the work in question be that of Pullman or railroad employes is dependent upon the contractual situation existing between the Pullman Company and the two railroads involved.

The carrier points out that it has been the practice for Pullman electricians to remove enginators from sleeping cars and then turn them over to railroad employes for overhauling. They would then be returned to the stock room where they might be requisitioned and used on a coach, diner or sleeping car. But the rule is that a practice cannot prevail over a clear and unambiguous contract provision although it may estop retroactive claims. The contract relied upon by the carrier and the railroads is designated as "Exhibit H" in the record. It clearly states with reference to sleeping cars that "air conditioning system, complete" shall be maintained by the Pullman Company. This being true, the work of maintaining air conditioning systems in sleeping cars, which include enginators, belongs to Pullman employes. The carrier does say in its submission that the overhauling of enginators belongs to railroad employes under a contract so providing. But the only contract in the record does not so provide. Consequently we are obliged to say that under the contractual situation shown by this record, the maintenance of air conditioning systems, including enginators, on sleeping cars leased to the Pullman Company, belongs to Pullman electricians under the express provisions of the agreement between the Pullman Company and the railroads. Under the agreements before us, claimants have made a case. If there be other controlling agreements calling for a different conclusion they are not in record.

A sustaining award is required by the record in this case. It will be sustained at the pro rata rate only as the proper rate for work lost is the contract rate which in the present case is the straight time rate.

AWARD

Claim (1) sustained.

Claim (2) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1953.