Award No. 1842

Docket No. 1748

2-PRR-URRWA, CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C. I. O.

PENNSYLVANIA RAILROAD COMPANY, THE (Western Region)

DISPUTE: CLAIM OF EMPLOYES: That under the current Agreement, Electrician E. W. Thompson is entitled to be compensated additionally eight (8) hours at the time and one-half rate of Electricians for having been denied the work of his Craft for each day, April 8, 9, and 10, 1953.

EMPLOYES' STATEMENT OF FACTS: There is an agreement dated July 1, 1949 and subsequent amendments, between the parties to the dispute, copy of which is on file with the Board and is, by reference hereto, made a part of this statement of facts.

At Rose Lake, Illinois, Southwestern Division, Western Region, The Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of electricians and assigned laborers.

E. W. Thompson, hereinafter referred to as the claimant, is employed at the seniority point as an electrician on a second trick with rest days Monday and Tuesday.

On April 8, 9 and 10, 1953, which days are Wednesday, Thursday, Friday of the work week, L. McCarey, an assigned laborer, first trick, with rest days Saturday and Sunday, was up-graded as an electrician helper to assist an electrician in wiring a hot water heater at the East St. Louis freight station.

A time claim was instituted at the foreman's level for E. W. Thompson, for eight (8) hours punitive rate for each of the aforementioned days, at the electrician's rate, and denied at each successive step, up to and including the general manager, highest officer of the carrier designated to handle disputes, and denied, evidence of which is submitted herewith and identified as Exhibit A.

POSITION OF EMPLOYES: It is respectfully submitted that the carrier is not authorized by the controlling agreement to assign a laborer to assist an electrician in the wiring of a hot water heater instead of electrical workers who are available and willing to work, in accordance with the graded work classification and Regulations 4-D-1 and 4-D-2—Electricians Work—"Installing, Maintaining and Repairing Electrical Apparatus."

of any provision of the applicable agreement, but was in strict accord with Regulation 2-A-4 as interpreted by the parties; that the claimant was not entitled under the agreement to have been used on the said vacancy; and that the claim should be denied, it is not necessary for your Honorable Board to decide the secondary issue in this case—whether the penalty rate of time and one-half is proper compensation. However, without waiving its position on the merits in this case the carrier wishes to point out that the claimant is not entitled, in any event, to additional compensation of eight (8) hours at the overtime rate of time and one-half for April 8, 9 and 10, 1953, as claimed. This claim is predicated on the basis that the claimant should have been used on the vacancy in question and not for work which he actually performed. Your Honorable Board has held that even if an employe has been improperly deprived of work for which he was available and which he was entitled to perform, since he has not performed the work he is entitled only to the pro rata rate. This principle has been aptly stated in the opinion of Board in Award No. 4244, Third Division, Referee Edward F. Carter, which reads as follows:

> "The right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. Whether the overtime rate be construed as a penalty against the employer or as the rate to be paid an employe who works in excess of eight hours on any day, the fact is that the condition which brings either into operation is that work must have been actually performed in excess of eight hours. One who claims compensation for having been deprived of work that he was entitled to perform has not done the thing that makes the higher rate applicable."

The carrier respectfully submits, therefore, that if your Honorable Board should decide, contrary to the facts, that the claimant is entitled to be paid for the time not worked by him on April 8, 9 and 10, 1953, compensation therefor may not properly be granted at the punitive rate.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the United Railroad Workers of America, C.I.O., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the issues in dispute in the instant case have already been decided by your Honorable Board in Award 1751 involving the same parties; that the use of Assigned Laborer McCarey to fill the electrician helper vacancy in question was in accordance with Regulation 2-A-4; that such action did not constitute a violation of the applicable agree-

ment; and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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 claim of the employes that an Electrician assigned to work on the second shift should have been called to fill the vacancy of Electrician Helper on the first shift, on an overtime basis, is not supported by the controlling agreement.

Regulation 2-A-4 provides:

> "Helper assignments shall be offered to the senior qualified laborer . . . regularly employed and working on the trick and at the location where the vacancy exists."

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September, 1954.