

**Award No. 1878**

**Docket No. 1757**

**2-AT&SF-EW-'55**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** (1) That under the current Agreement the Carrier improperly assigned Electrician Helper, Robert J. McCall to the position of an Electrician on and subsequent to April 16th, 1953, at Pueblo, Colorado.

(2) That accordingly the Carrier be ordered to additionally compensate Electrician Ival C. Heaton for all time that said Helper McCall was used as an Electrician retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Ival C. Heaton, hereinafter referred to as the claimant, is an hourly rated employe, regularly employed by the carrier in the mechanical department, Pueblo, Colorado, as an electrician. On, or prior to, April 16, 1953, Electrician Helper Robert J. McCall, having only a few months experience as an electrician helper, which is reflected by the copy of the electrician helpers' roster (submitted herewith and identified as Exhibit A) was assigned to fill an electrician's position at Pueblo, Colorado, from the aforesaid date and is still occupying that position.

The agreement dated August 1, 1945, as subsequently amended, is controlling.

**POSITION OF EMPLOYEES:** It is submitted that under the pertinent parts of Rule 29, Paragraph (a), Rule 91 and Section D of Appendix "A", which reads as following:

**Rule 29 (a)**

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft."

**Rule 91**

"Any man who has served an apprenticeship, or who has had four (4) years practical experience in electrical work, and who is

alent to an acceptance of the decision of the carrier. It is final and conclusive of all matters arising out of the alleged breach of the agreement.

Where it appears on the face of the record, including the previous records of the Board involving the same dispute, that no unadjusted dispute exists, the Board should refuse to docket the claim. To do otherwise would be a vain thing and only tend to encumber the records of the Division." (Emphasis supplied)

In other words, this same dispute was originally raised on May 9, 1953, then dropped only to be re-submitted on June 16, 1953, which of course was likewise not handled within ten days of date of occurrence.

Carrier respectfully requests that this Board deny the employees' claim in its entirety.

**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 were given due notice of hearing thereon.

On March 6, 1953, carrier assigned R. J. McCall, a furloughed machinist, to position of electrician helper at Pueblo, Colorado. On April 16, 1953, McCall was upgraded to electrician without seniority at same location, being assigned to second shift. Organization contends agreement was violated because McCall did not possess the contractually specified qualifications for electrician. It requests that first shift electrician Ival C. Heaton be compensated for all time that McCall was used as an electrician retroactive to April 16, 1953.

Carrier concedes McCall did not possess the qualifications for electrician as set forth in the agreement, but asserts that after having exhausted the procedure for filling electrician vacancies as provided in Appendix A of said agreement, management is entitled to use such means as are available to acquire the necessary personnel.

The evidence does not support organization's contention carrier refused to employ qualified electricians who were available for employment at Pueblo. Carrier also contends it exerted some effort to secure qualified men for electrician positions at this location, but without success.

It is clear, however, that the upgrading of McCall to the electrician classification was in violation of the agreement. Said employee did not meet the qualifications set forth in Rule 91, nor did he meet any of the alternative qualification criteria contained in Section (d) of Appendix A. The understanding between the parties as contained in organization's letter to carrier dated December 21, 1946, had been cancelled by Memorandum of Agreement No. 4, effective December 16, 1950. The parties had not reached any special agreement or understanding concerning the upgrading of McCall. Rule 29 (a) provides that: "None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft."

While we are compelled to find that the agreement has been violated as charged, we do not find that the compensation requested for Electrician Heaton is justified under the circumstances of this case.

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AWARD

Claim sustained as modified above.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.