

Award No. 2359
Docket No. 2115
2-UP-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreement the Carrier improperly assigned a Section Foreman and crew of four (4) men to clear trouble on the telephone wires at Mile Post 101.25 between Montpelier, Idaho and Cokeville, Wyoming on Jan. 11, 1953.

(2) That accordingly the Carrier be ordered to additionally compensate Districtman L. E. Dixon at the applicable overtime rate of pay for the amount of time equal to that consumed by the Section Foreman and his crew in clearing this trouble, which amounted to fifteen hours. (15 hrs.)

EMPLOYEES' STATEMENT OF FACTS: The Union Pacific employs telephone and telegraph districtmen with headquarters at different stations along the way. Districtman L. E. Dixon, hereinafter referred to as the claimant, is employed as such with headquarters at Montpelier, Idaho, working from Monday through Friday, Saturday a stand-by day and Sunday a rest day. The regular starting time for the claimant is 8:00 A. M. On January 10, 1953, at 4:15 P. M., wire chief at Pocatello notified the claimant that one line of circuit 78 was broken between Cokeville, Wyoming and Montpelier, Idaho. The claimant tested wires with wire chief at 5:35 P. M. and tests showed that wire No. 1 was shorted with one side of 78 circuit between Montpelier and Cokeville. This territory being one of the coldest on the system, and it being dark at this time, the wire chief told this claimant to wait until morning to clear the trouble as they could get by for the night. At 11:45 P. M., January 10, 1953, the Montpelier operator called the claimant and told him it was not necessary to work Sunday, January 11, 1953 to clear the trouble. Near midnight Sunday night, a train crew reported a tree leaning against telephone line at M. P. 101.25 to the dispatcher. The claimant, on Monday morning, January 12, 1953, received a message from the wire chief to check on this location for the trouble. Meanwhile at 12:30 A. M., January 12, 1953, the dispatcher called a section foreman and his crew of four men who went to M. P. 101.25 and moved

facts show, the section crew made no repairs to the wires nor performed any electrician's work, but merely removed the tree—work which they could appropriately perform without violating the effective agreement with the electricians' organization.

We have shown that it is proper and customary for the section men and, in addition, signalmen to do such work as here involved and to assist with the actual telegraph work where necessary. That is the way it has always been done on this property.

If the communications service had been interrupted to the extent that the supervisor at the Pocatello telegraph office determined that he should send the districtman out, he would have done so on January 10, 1953 (Saturday) when this situation first appeared. Had that occurred, the districtman would, no doubt, have required the help of the section men to remove the tree. Had that occurred, Districtman Dixon would not have been paid any penalty time as that would have been on Saturday night, during which no penalty time is payable. However, as shown, the supervisor did not feel that it was necessary to send the districtman out at that time. Certainly, there was no need to send the sectionmen on January 12, insofar as any requirement of the communications service.

Section men, as well as signalmen, have for many years consistently performed work in and around this carrier's communications plant. There have been no previous objections to the method of handling. In fact, as the record shows, the districtmen have requested, on their own, assistance from section men and others in performing the very work to which the organization is here laying exclusive claim. That contention must be rejected.

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 complaint is that carrier, on Sunday, January 11, 1953, improperly assigned to and had a section foreman and a crew of four clear trouble on the telephone wires at Mile Post 101.25 between Montpelier, Idaho, and Cokeville, Wyoming. Because of that fact, which it is contended is in violation of Rule 3(b) of the parties' controlling agreement, the request is made that we order carrier to pay Districtman L. E. Dixon for the amount of time equal to that consumed by the section foreman and his crew in performing the work. It is claimed they used 15 hours for this purpose and compensation therefor is asked at the applicable overtime rate.

Carrier contends that notice must be given to the Brotherhood of Maintenance of Way Employes of the pendency of this claim. For reasons which we have often stated, and which it would serve no useful purpose to repeat, we do not agree that such is either desirable or necessary as this Division has neither jurisdiction nor authority to interpret and apply their agreements with this carrier, which rests with the Third Division.

Carrier employs Telephone and Telegraph Districtmen with headquarters at different stations along its right of way. Whenever difficulty arises in connection with its communications circuits within the territory assigned to Pocatello, Idaho, which includes those between Montpelier, Idaho, and Cokeville, Wyoming, it becomes the responsibility of the supervisor in Pocatello to test and check such lines with these districtmen in an effort to determine the cause thereof. On Saturday, January 10, 1953, between 4:15 and 4:30

P. M. the chief operator at Pocatello, in cooperation with claimant, who had his headquarters at Montpelier, Idaho, ascertained wire No. 1 was shorted with one side of telephone Pair No. 78 between Cokeville and Montpelier, which claimant was instructed to investigate and clear the next morning. Later that evening, however, he was instructed to disregard his previous orders in this respect.

Sometime late Sunday night, January 11, 1953, an engine crew reported to carrier's dispatcher at Pocatello that a tree had fallen across the line near Mile Post 101.25 and was threatening the track. Admittedly the latter could not have been true for the pole line at that point is about 75 feet from the track and the tree, which was about 27 feet in height, was located some 10 feet outside of carrier's property line. It had been cut down by beavers. The assistant chief dispatcher at Pocatello directed a section crew to remove the tree, which it did about 2:30 A. M. on Monday, January 12, 1953. The trees had not broken any of the wires, it was just pushing them together when the wind blew and thereby causing the wires touching each other to short out. It took about 3 hours to remove the tree from the telephone and telegraph wires.

Rule 3 (b), covering the work of district men, includes in their work the duty of "locating and clearing all trouble inside or outside and similar work in connection with telegraph and telephone plants."

There is no question but what claimant was called upon to locate the trouble but not to clear it, which the language quoted includes. We think the rule required carrier to call claimant for that purpose. However, we do not think he should be paid for all the time worked by all members of the section crew. Admittedly, in the event that a lineman or districtman cannot handle the work himself, the practice has been to call on the section men for help to perform the work under the direction of the lineman or districtman. This has application to the factual situation here. In view thereof we find the claim should be allowed but only for three hours.

Claimant was a monthly rated employe and Sunday was his assigned rest day, on which he would have been paid at the overtime rate for all work he was required to perform thereon. Consequently the three hours must be allowed on that basis.

AWARD

Claim sustained for three hours at the overtime rate applicable.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1956.