

Award No. 2513
Docket No. 2361
2-CRI&P-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier improperly assigned other than employees of the Communication's Department to dig trenches and bury underground cable for a paging and talk-back communication system from July 14, through July 26, 1955.

2. That accordingly the Carrier be ordered to compensate the employes of the Communication's Department assigned to gang No. 3 equally at the applicable over-time rate for the total number of man hours Section Labor was assigned.

EMPLOYES' STATEMENT OF FACTS: Communications' Department Line Gang No. 3 was assigned to work at El Reno, Oklahoma Yards during the period July 14 through July 26, 1955, to construct and install a communications paging and talk-back system. Underground cable was used in installing this communications system and it was necessary to dig trenches between and under tracks in the yard at El Reno.

Section labor was assigned and worked 174 man hours digging the underground trenches and the section foreman worked 32 hours for a total of 206 man hours section labor was used in connection with installing the communications system at El Reno from July 14 through July 26, 1955.

This dispute has been handled with all carrier officials designated to handle such disputes all of whom have declined to make an adjustment satisfactory to the employes.

The agreement effective June 1, 1953, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing facts support the employes' contention that the claim is valid on the basis of the scope rule of the controlling agreement which reads:

time lost, the carrier, without prejudice to its position as to the merits of this claim, contends any award made in favor of the claimants should be at the pro-rata rate. Your Board has held on numerous occasions that penalty for time not worked differs from time actually worked. The language contained in the opinion of the Board in Third Division Award No. 7062 is particularly appropriate.

"The penalty rate for work lost because it was given to one not entitled to it is the rate which the occupant would have received if he had performed it as a part of his regular assignment."

Because the applicable communications department agreement does not support the instant claim, the carrier has declined the claim and we respectfully request your Board to do likewise.

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.

During the period involved in the claim the carrier used section forces to dig and backfill trenches for underground cable necessary for a communication system. Line gang number three installed the system and the claim requests pay to members of that gang for the work performed by such section force.

The scope rule covers work "pertaining to the construction, installing, * * * of communication pole, cable and wire lines, telegraph, telephone and printer wires and circuits, communication carrier, radio, inter-communicating, public address and similar systems."

It appears that digging and backfilling trenches for underground cable necessary to a communication system, such as is here involved, is within that scope rule because it is work pertaining to the installation of such system. Consequently part one of the claim must be sustained.

With respect to part two of the claim, it appears that the work involved is within the groundman classification established by Rule 1 (f), so the claim can be sustained only at that rate. Likewise under our awards the appropriate penalty rate for work not performed, under the circumstances here existing, is pro-rata.

AWARD

Claim sustained at groundman's pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1957.