

Award No. 2562

Docket No. 2348

2-B&O-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. 30, RAILWAY EMPLOYES'
DEPARTMENT, AFL (Electrical Workers)**

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement by assigning others than electrical workers to perform electrical workers work on June 7, 8, 9 and 10, 1955.

2. That electrician (second class), Harold D. Diehl be compensated for eight (8) hours pro rata for June 7, 8, 9 and 10, 1955 for work which he should have been called upon to perform.

EMPLOYEES' STATEMENT OF FACTS: At Cumberland, Md. on June 7, 8, 9 and 10, 1955, employees of the Maintenance of Way Department were assigned to operate 3-ton electric travelling cranes during the course of construction work in the back shop for the purpose of handling and setting in place, materials used in connection with said construction work, while electrical workers were furloughed and who held seniority as crane operators in the back shop.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company with the result that he has declined to adjust it.

The agreement effective September 1, 1926 and as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is the contention of the employees that the carrier by assigning employees of the Maintenance of Way Department to the operation of the 3-ton jib cranes violated the provisions of Rule 127 of the current agreement which reads:

"Groundman's work shall consist of assisting linemen in their duties, when said work is performed on the ground, but shall not

the carrier makes reference to paragraph (c) of Section 1 of Article V of the August 21 agreement. That rule reads that:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board."

The final decision on this case was rendered August 10, 1955. The declaration of intention to file in this case is dated April 16, 1956. The declaration of intention to file scarcely constitutes the institution of proceedings as provided for in paragraph (c), i.e., a full and complete statement of facts. Under such circumstances, the carrier submits that this particular dispute may not have been timely filed within the meaning of the new Time Limit Rule. If such proves to be the case, then the claim made here is patently barred.

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.

Rule 127 specifically includes "electric crane operators of cranes of less than 40 ton capacity" within Groundman's work of the electricians' craft. Since the carrier has thereby contracted to have such cranes operated by employees of that craft, it is of no consequence that the operation of the crane, on the dates specified in the claim, was for the purpose of assisting maintenance of way forces in the performance of their work within the shop building.

While the carrier contends that this is a jurisdictional dispute, there is no evidence in this record to sustain that contention.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.