

Award No. 3444
Docket No. 3452
2-PULL-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO. (ELECTRICAL WORKERS)
THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when Relief Agent-Foreman J. D. Spangler, when relieving Agent-Foreman J. E. Partridge, on September 13 and 14, 1958, performed six hours of Electrical Workers' work on each of these days, instead of calling Electrician J. W. Benton who was off on his relief days and available to perform this work if called.
2. That accordingly the Carrier be ordered to compensate Electrician J. W. Benton in the amount of 12 hours' at the time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: At Norfolk, The Pullman Company in the year 1952, employed a foreman and an assistant foreman. The foreman L. P. Russell, retired and the assistant foreman H. B. Parker was assigned to the foreman's position and the assistant foreman position was abolished. Electrician J. D. Spangler was assigned to relieve Foreman Parker on his relief days of Saturdays and Sundays. On these days he assumed the working hours and the conditions of the foreman's position and he was paid in accord with Rule 15, of our agreement.

This method of applying Rule 15, has been followed at Norfolk since 1953. On Saturday, January 24, 1953, when J. D. Spangler was assigned to relieve Foreman Parker he was assigned to make inspections and repairs electrical equipment on Pullman Cars. As a result a claim charging violation of Rules 2 and 5 (b) was made (See Exhibit F, page 1). The foreman denied this claim (See Exhibit F, page 2). We appealed this decision to Mr. Dodds, appeals officer (See Exhibit F, page 3). Mr. Dodds reversed the decision of Foreman Parker and paid Electrician F. L. Lewis 8 hours' pay for this violation (See Exhibit F, page 4).

On this same date, Saturday, January 24, 1953, Foreman Parker released Electrician W. L. Burkett from duty at the end of his regular bulletin hours of duty and then assigned J. D. Spangler to make adjustments to a lamp regulator instead of permitting Electrician Burkett to perform this work. A claim

was not promoted to the position of Temporary Relief Foreman, that he had no seniority as a supervisor, that he was an "electrician," and that he was entitled to the differential. In the Bunn case, it will be noted, Electrician Bunn did not perform electricians' work during the period he relieved as supervisor. In the instant case, however, the parties are agreed Spangler performed 6 hours' electricians' work. Thus, the Bunn case and the instant case do not involve the same facts.

Interpretation No. 1 of Award 1794, also cited by the organization, involved the question the question of whether Bunn should be paid in addition to the differential for hours worked in a supervisory position in excess of 8 hours, a condition not involved in this dispute. In the instant case, the hours of the agent-foreman did not exceed 8 hours. Moreover, as previously pointed out, Spangler was assigned to perform supervisory duties for only 2 hours on the dates in question.

CONCLUSION

In this ex parte submission the company has shown that on September 13-14, 1958, Electrician Spangler properly was assigned to perform certain supervisory duties while Agent-Foreman Partridge was on his relief days and to the agreement. Also, the company has shown that for all work performed on September 13-14, 1958, Spangler was paid the 15c per hour differential provided in Rule 15. Finally, the company has shown that Electrician Benton was not entitled to perform the work in question and that no adjustment is due Benton or any other employee.

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.

Parties to said dispute were given due notice of hearing thereon.

Relief Agent-Foreman J. D. Spangler, on September 13 and 14, 1958 when relieving Agent-Foreman J. E. Partridge, performed six hours of electrical work along with his supervisory duties. For all hours worked on these days, Spangler received 15c per hour differential over and above the minimum rate paid electricians.

The Organization contends that when J. D. Spangler was assigned to fill the position of Agent-Foreman on these days, he was employed as a supervisor and the agreement, Rules 2 and 5(b) prohibit him from performing the work of journeymen or apprentice electricians. The rules in question are as follows:

Rule 2. Assignment of work.

"None but journeymen or apprentices employed as such shall perform the work outlined in Rule 5 of this agreement."

Rule 5 (b)

"Electricians work shall include electric wiring, testing, dismantling, assembling, maintaining, rebuilding, repairing, inspecting . . . electrical fixtures inside and outside of cars . . . maintenance of all air conditioning systems in

their entirety . . . and all other work, generally recognized as electricians' work."

The carrier admits that on each of these dates (he) Spangler was assigned and did perform the supervisory duties for two hours and during the remaining six hours "he performed his regular electrician duties." They contend that Rule 15, does not preclude the company from permitting an electrician so assigned temporarily to the position of supervisor from performing electrician's work. We agree with the carrier relative to Rule 15. This is a pay rule and Mr. Spangler was compensated according to this rule.

The carrier cites a memorandum dated June 30, 1948 to its superintendents and other officials in support of its denial of this claim. The memorandum was not agreed to by the organization and may not be considered a part of the agreement.

This record reveals that Mr. Spangler was an electrician assigned temporarily to fill the position of agent-foreman. He assumes all of the conditions of the agreement governing supervisors while working this assignment, and, therefore, would be unable to perform duties of a journeyman electrician as classified under Rule 5 of the agreement.

The claim as presented for Electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate.

AWARD

Claim sustained as above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1960.