

**Award No. 4233
Docket No. 4023
2-SLSF-EW-'63**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That it is improper for the Carrier under the present Agreement to assign diesel foreman to perform work contracted to the Electrical Workers under Rule 105, Controlling agreement.
2. That accordingly the Carrier be ordered to compensate the Electrician B. B. Hunt, the claim as presented for six (6) hours at his regular straight time rate for September 8, 1960.

EMPLOYES' STATEMENT OF FACTS: Diesel 5230 became inoperative at Madill, Oklahoma, on September 8, 1960. Foreman Adams at Madill with the assistance of the engine crew inspected the inoperative engine and located the trouble in the governor, and had cleaned the rheostat, but were unable to repair it. At approximately 6:45 P. M. on above date Foreman Adams of Madill called Sherman, Texas Diesel Shop to report their trouble. The yardmaster at Sherman received the call and notified Diesel Supervisor B. L. Herman that the lead unit 5230 on freight train No. 530 at Madill was inoperative. Supervisor Herman immediately drove to Madill to make repairs. After another inspection, located the trouble in the governor wherein he states that a loose screw in the field limit was overlooked in the rheostat.

This dispute has been successively handled on appeal as set forth under the controlling agreement up to and including the highest designated official to whom such claims are to be handled, who have consistently declined the claim.

POSITION OF EMPLOYES: It is submitted that the assignment of the Diesel Supervisor to remove, inspect, and repair the governor on Unit 5230 unjustly deprived the claimant of the benefits he was entitled to, and the

When the diesel supervisor arrived at Madill he found that the cover had been removed from the engine governor and that its rheostat had been cleaned. There was, however, a loose screw in field limit rheostat form which needed to be tightened and the unit was again operative within ten minutes after the supervisor's arrival.

Three hours elapsed between the time the diesel supervisor received the report of the inoperative unit (6:45 P. M.) and the time he returned to Sherman (9:45 P. M.). No satisfactory explanation has been given the carrier of the reasons for the claimant claiming six hours at pro rata rate. Assuming that the claimant had accompanied the diesel supervisor to Madill and return, he would not have been entitled under emergency road service rule 10 to payment in excess of actual elapsed time. Moreover, the claimant was called at 8:10 P. M., September 8, 1960 to service diesel unit 209 in Sherman Yard for which the claimant received a minimum of four hours at pro rata rate under call rule 7 (d) and, therefore, he could not under any and all circumstances have sustained any lost time except from 6:45 P. M. to 8:10 P. M.

In conclusion, item 2 of the employes' statement of claim is defective for the reason that no claim for September 6, 1960 was ever handled on the property. The claim should be denied for this reason if none other.

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 waived right of appearance at hearing thereon.

Foreman Adams was stationed at Madill, where no mechanics are employed. When diesel 5230 became inoperative there, the foreman with the assistance of the engine crew, examined it and cleaned the rheostat, but was unable to put the diesel into operation. The foreman therefore telephoned the yardmaster at Sherman, who notified Diesel Supervisor Herman that the diesel was inoperative.

The claim is that the carrier assigned the diesel foreman to go out and perform work contracted to the electrical workers. But the carrier alleges that until after the arrival of the diesel supervisor it was not known whether the trouble was electrical or otherwise, and the record indicates nothing to the contrary. In fact, the Employes placed in the record the initial denial of the claim, which stated that upon the call to the yardmaster at Sherman no indication was given as to the nature of the trouble or what craft might be needed to make repairs. The carrier had a clear right to send the diesel supervisor to find what was wrong, and to do so without sending out a mechanic of each craft whose work might later prove to be involved.

At any rate, the carrier did not "assign the diesel supervisor to perform work contracted to the Electrical Workers;" it assigned him to learn what had to be done, which was no violation of the Agreement. His inspection of the inoperative diesel was clearly within his supervisory duties.

Since the foreman and the engine crew did not discover the looseness of the screw before the diesel supervisor's arrival, it was presumably not apparent to the eye, and was then discovered by normal testing of tightness which at the same time perhaps tightened the screw; but even if it was not tightened in that operation, the supervisor would still have been within his duties if he tightened it to find whether its looseness, and not some other defect, had caused the trouble. It can hardly be argued that he should have sent for an electrician to tighten the screw so that he could observe the result, or that upon learning it he should have loosened the screw and sent for an electrician to tighten it again.

In the foregoing we have assumed that the supervisor himself tightened the screw, which is not shown by the record. As he was working with the foreman at Madill, the record does not exclude the possibility that the screw was actually tightened by the foreman, whose right under Rule 31(a) to perform such work under the conditions is conceded.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.