

**Award No. 4326**  
**Docket No. 4297**  
**2-AT&SF-EW-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY (Western Lines)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier, has in violation of the controlling Agreement assigned others than Communication Department Division Lineman to install and maintain communication equipment and that this action was an injustice to Communication Department Division Lineman R. N. Hendon; and

2. That accordingly the Carrier may be ordered to:

(a) Compensate Division Lineman Hendon eight (8) hours at his regular time and one/half rate for the month of November 1960 and for each succeeding month thereafter until this work is assigned according to the Agreement, and

(b) to assign the work of installing and maintaining this equipment to division linemen, as provided in the Agreement.

**STATEMENT OF FACTS:** Mr. R. N. Hendon, hereinafter referred to as the Claimant, is regularly employed by the Atchison, Topeka and Santa Fe Railway, hereinafter referred to as the Carrier, in their Communications Department as a Division Lineman. Division Linemen are employed by the Carrier to install, maintain, repair and clear all trouble on Communications equipment within a specific territory of the Carriers property. The Claimant is assigned that territory which this claim embraces. The Claimants regular work week is Monday through Friday with Saturday and Sunday as rest days, except that he may be required to perform work of an emergency nature on Saturday.

The Carrier has on the property an extensive Communications system. A large portion of this communication system depends on telephones. These telephones come under the Communications Department. The Claimant is assigned the task of maintaining these telephones on his specific territory.

no evidence that any maintenance or repair work has been performed on any of the code phones on the territory involved in this dispute. In the absence of any such showing, the employes' claim for a penalty of eight hours at the time and one half rate for each month commencing with November 1960, can only be considered as pure speculation without any foundation in fact. The carrier asserts that the claim is without justification or support.

The carrier further asserts that the employes' claim is excessive in that it seeks payment at the time and one-half rate of pay, contrary to the well known and firmly established principle of this and other Divisions of the National Railroad Adjustment Board that the proper compensation for work not performed is the pro rata rate.

\* \* \* \* \*

In conclusion, the carrier states that the Employes' claim in the instant dispute should be either dismissed or denied for the reasons expressed herein.

**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.

In this dispute, the Organization seeks to assess a violation of the controlling agreement by the Carrier, in that the Carrier assigned other than Communication Department Division Linemen to install and maintain communication equipment.

The Organization further seeks the assignment of Division Linemen to the installation and maintenance of the equipment in question.

The particular equipment here consists of "code phones" located between Trinidad, Colorado and Raton, New Mexico. These phones are an integral part of carrier's Traffic Control System, according to the carrier, and have always been installed and maintained by Signal Department employees.

The Organization contends that these are telephones used in carrier's Communications System within the meaning of Rule 119 (a) and (b), and that their installation and maintenance belongs to Division Linemen.

Rule 119 reads in part as follows:

"(a) Division Linemen: An employe assigned to maintain a district, to install, test, inspect, adjust, maintain, repair, clear trouble on, assemble and/or dismantle inside and outside communication plant, with or without assistance, specifications, or drawings thereon.

"(b) Electrician: An employe assigned as lead cable splicer, or to build, maintain, install, assemble, inspect, adjust, test, repair and/or dismantle telephone, telegraph or teletype apparatus, switchboards,

and other communication plant equipment, appurtenances or associated wiring, with or without specifications or drawings."

Third party notice was given to the Brotherhood of Railroad Signalmen, and they have replied that they are not involved in any dispute with the carrier.

Carrier complains throughout the record that the Organization does not indicate dates or places where it allegedly violated the Agreement. The Organization states that it will accept the carrier's records, or will settle the dispute by having the carrier assign this work to the Electrical Workers.

This does not satisfy the Burden of Proof required to support the claim made here but we choose not to resolve this dispute on that ground.

We have previously ruled on this matter in Award No. 4157, and in Awards 4246 and 4247 we reaffirmed our holding in that Award.

The parties were the same, and in fact, the individual Claimant was the same in the latter two awards. Nevertheless, we have examined the file and submissions herein, and conclude that the "code phones" are an integral part of the carrier's Traffic Control System, and have not been changed to carrier's Communications System. Until proof of the latter is properly presented to us, we must hold that the work involved does not belong to the Electrical Workers.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1963.