

Award No. 4491
Docket No. 4475
2-CMStP&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, on January 16, 18, 19, 24 and 25, 1962, violated the provisions of the current agreement when it assigned employees of the Signal Department to assist the District Lineman to distribute and set approximately twenty-six (26) telephone and telegraph poles.
2. That accordingly, the Carrier be ordered to additionally compensate five (5) employees of the Telephone & Telegraph Line Crew Gang as follows:

N. J. Henry, Groundman, for 36 hrs. @ \$2.326 per hour

E. L. Winters, Lineman, for 40 hrs. @ \$2.614 per hour

L. M. Sieler, Lineman, for 40 hrs. @ \$2.614 per hour

V. O. Rich, Lineman, for 40 hrs. @ \$2.614 per hour

R. M. Vallard, Foreman, for 36 hrs. @ the monthly rate of \$594.60.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the carrier, employs district linemen and groundmen in the telegraph and telephone (communications) department to perform, among other things, the work involved in this dispute. The above mentioned employees, hereinafter called the claimants, are employed in the carrier's telegraph and telephone (communications) department and perform, among other things, the work of handling and setting poles and assisting district linemen in the performance of such work.

The carrier submits that there is no schedule rule or agreement which supports the penalty claim with which we are here concerned.

The carrier submits that it is readily apparent that by the instant claim the employes are attempting to secure through the medium of a board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held by the Second Division, as well as by the other three divisions and the various Special Boards of Adjustment, that your board is not empowered to write new rules or to write new provisions into existing rules.

The carrier further submits that the instant claim is in no way supported by schedule rules, agreements or past practice and we respectfully request that the claim be denied.

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.

The Division finds that those claims alleging that signal crews improperly performed work belonging to electricians on January 16, 17, 19 and 24, 1962 are not well founded. The Division is of the opinion that a reasonable construction of Rule 72, defining the work of linesmen, is suggestive of the conclusion that signalmen may at times perform duties similar if not identical to those of linesmen. The Rule specifically states that if a signal maintainer spends 50% or more of his time doing the work of a linesman, he is considered a linesman. Such language tends to negative the conclusion that members of the electricians craft exclusively perform the work described in Rule 71 and 72.

The record contains clear and specific statements from the Carrier as to the dates, the poles dug and the specific amount of signal wire attached to each pole as well as the statement that a signal crew worked along side of the linesmen but they only worked on signal equipment and not on communication wires. The Carrier admits that the signal crew, at the request of the linesman, assisted him in setting and handling poles to which were attached both signal and communication wires. The Organization's statement on this subject matter was much more general than the Carrier's.

In view of the language of Rule 72, and the fact that the signal crew on the aforementioned days handled poles containing both signal and communication equipment, but only worked on signal wires attached to the poles, the Division cannot find that the contractual province of the claimants was invaded.

The Division had more difficulty resolving the claim for work done on January 25, 1962, because the Carrier admitted that the signal crew handled poles which contained no signal wires but did contain communication equip-

ment. Nevertheless, the persuasive force of the language of Rule 72 and the Carrier's allegation, which was not successfully rebutted, that the handling of poles on this property was not the exclusive work of the electricians' organization, give the Division little recourse but to deny the claim in the absence of additional evidence.

The Division further finds that Foreman Claimant Vallard is not a proper claimant because as a supervisor he is not working under the terms and conditions of the cognizant agreement, and, therefore, he cannot validly file and enforce any claims thereunder.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.