Award No. 4617

Docket No. 4568

2-CMStP&P-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company had violated the Electrical Workers' Agreement Rules Nos. 71 and 53, when they allowed two (2) employes from the Stangard Refrigeration Company to replace and repair parts to deep freeze in Business Car Montana on July 24 and 25, 1962.

2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter recognized as the Carrier, be ordered to compensate Electrician V. Mathe, hereinafter recognized as the claimant, two days pay at the rate of $32.8896 per day for July 24 and 25, 1962.

EMPLOYES' STATEMENT OF FACTS: Claimant Mathe is employed at Western Avenue Coach Yard, Chicago, Illinois, as an electrician.

The claimant was off duty and on his regular rest days and was available to perform this work pending a call from the carrier's local management.

The claimant involved in this case is an electrician with many years of experience in work of this nature, and the qualification of the claimant cannot be disputed on work of this nature.

The work as claimed by the claimant was work performed by the employes of the Stangard Refrigeration Service Inc., of Chicago, Illinois.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The electrical workers' agreement, effective September 4, 1949, is controlling.

POSITION OF EMPLOYES: That the electrical workers' schedule Rule 53 clearly indicates as to who shall perform service on the Carrier's equipment and such rule reads as follows, in part:

Claims and contentions contrary to the Carrier's position must be supported by factual proof in order to overcome managerial judgments and prerogatives in contracting out work. A carrier's managerial judgment cannot be lightly regarded because of the burden the Carrier assumes as a public carrier and also because of its responsibility to its employes.

It is, of course, the responsibility of the Organization to disprove the Carrier's contentions and statements. In this case, the Board believes that the Organization failed to sustain that burden of proof. It is true that the Organization presented proof in its rebuttal statement, but it is the Board's disposition that such evidence must be raised and introduced on the property and included in the initial submission to the Board, otherwise it is inadmissible."

The carrier submits that it is readily apparent that by the instant claims 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.

In view of the foregoing the carrier submits that the instant claim is not not supported by schedule rules or past practice and the carrier respectfully requests 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 electrician claimant was on his rest days from carrier's Western Avenue Coach Yard when an outside contractor made certain repairs to a deep freeze unit in a Business Car. Claimant alleges that he should have been called to perform the work and he asks for two days' pay at the overtime rate.

The Carrier answers Claimants' charge by admitting that the work was performed by the outside contractor but states that:

1. The work was performed under terms of a warranty, and

2. The electricians have never performed this type of work previously.

The ex parte submission of the employes contains an exhibit to which the Carrier objects, stating that the exhibit violates Circular 1 of this Board. In the absence of a refutation that the exhibit was in fact discussed on the property we must uphold Carrier's objection and disregard the exhibit.

Rule 71, the Classification of Work rule, does not specifically mention deep freezes or refrigeration equipment as being within the scope of electricians' work. Without any affirmative evidence being submitted to us to support such a finding we are unable to say that the repairs to the equipment of the type mentioned would fall within that portion of Rule 71 which provides:

". . . and all other work properly recognized as electricians' work."

We are of the opinion that this claim must be denied for the reasons given.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.