

Award No. 4618
Docket No. 4569
2-CMSiP&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 EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

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

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company has 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 19 and 20, 1962.

2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter recognized as the Carrier, be ordered to compensate Electrician F. Mangogna, hereinafter recognized as the claimant, two (2) days pay at the rate of pay of \$32,8896 per day for July 19 and 20, 1962.

EMPLOYEES' STATEMENT OF FACTS: Claimant Mangogna is employed at Western Avenue Coach Yard 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 qualifications of the claimant on work of this nature cannot be disputed.

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

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

The Electrical Workers' Agreement, effective September 1, 1949, is controlling.

POSITION OF EMPLOYEES: The Electrical Workers' schedule Rule No. 53 amply clarifies "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules." (Underscoring ours) and schedule Rule 71 states, in part, "and all other work properly recognized as

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 employees 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 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 employees 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.

Except for the two dates involved the facts surrounding the claim in this instance are the same as those presented in Award 4617.

The parties have previously agreed that the decision rendered in Award 4617 is controlling herein, therefore this claim must also be denied.

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.