

Award No. 4937

Docket No. 4818

2-AT&SF-EW-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, The Atchison, Topeka and Santa Fe Railway erred when it assigned Assistant Supervisor Diesel Engines (ASDE) J. B. Armstrong to clear electrical trouble on Electro Motive Division (EMD) locomotive unit 16B.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway be ordered to compensate Electrician W. L. Jarrell eight (8) hours at his regular overtime rate.

EMPLOYEES' STATEMENT OF FACTS: W. L. Jarrell, hereinafter referred to as the claimant, is an electrician, employed on an hourly basis in the maintenance of equipment department by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, at carrier's Redondo Junction Roundhouse at Los Angeles, California. His assigned duties are the making of electrical inspections, clearing electrical troubles, making repairs on this type of EMD locomotive.

On October 17, 1962, the carrier, instead of having electrical work performed by electricians having the contractual rights to perform such work, assigned such electrical work to assistant supervisor of diesel engines, J. B. Armstrong.

Claim was filed and handled in accordance with the agreement, with all the company officials designated by the Management to handle such disputes, all of whom refused to make any adjustment.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

The carrier submits that the service performed by ASDE Armstrong on October 17, 1962 was not in violation of Rules 29(a) and 92 of the shop crafts agreement; quite to contrary, Rule 29(a) provides:

"This rule does not prohibit foremen in the exercise of their duties, or foremen at points where no mechanics are employed, to perform work."

Such work has, over the years, customarily been protected by the ASDE's who are supervisory employes with substantially the same authority as a foreman. The instant claim is, therefore, without merit under the rules of the governing agreement, and should be declined for that and the other reasons herein expressed.

Without prejudice to the foregoing, the Board's attention is directed to the claim for time and one-half rate. This and other divisions of the National Railroad Adjustment Board have ruled in numerous awards that compensation at time and one-half rates is not an appropriate penalty unless service is actually performed. See Second Division Awards 1269, 1771, 1772, 1799, Third Division Awards 4244, 4645, 5929, 5967, 8766, 8771 and Fourth Division Awards 802 and 1099, among many others which support this same principle.

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.

Claim is made here on behalf of Electrician W. L. Jarrell for (8) eight hours pay at the overtime rate on the allegation that Carrier violated the provisions of the effective Agreement between the parties, when Carrier assigned Assistant Supervisor Diesel Engines (ASDE) to perform electrical work on engine unit 16B. Claim date October 17, 1962.

It is contended that Carrier violated the provisions of Rule 29(a);

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each."

The Organization states that electricians are assigned to positions at Los Angeles, where the disabled diesel unit arrived in train No. 19, on October 16, 1962, that no electrical work was performed on unit 16B while in Los Angeles, and it was coupled with the engine and other units departing with Train 124, October 17, 1962. Prior to arrival of Diesel Unit 16B, on October 16, it is noted that contacts on movable motor shunts had been removed by an ASDE when he left the train at San Bernardino, reducing the engine speed to Run 6.

The Organization further contends the Carrier violated the provisions of "Classification of Electricians", Rule 92 of the current Agreement, and that

its employes have the exclusive right to perform the work as was performed by (ASDE) J. B. Armstrong.

Carrier takes the position that Diesel Unit 16B on arrival at Los Angeles was not in proper condition due to electrical failures. That an ASDE had worked on the engine while on Train No. 19, but who left the Unit at San Bernardino, where he notified Mechanical forces at both Barstow and Los Angeles. That in order to make proper repairs to Unit 16B it would be necessary to work on the Unit while running and under load.

That as a result, Carrier not having proper equipment at Los Angeles, to make tests on road type diesel units, Unit 16B on arrival at Los Angeles was not sent to roundhouse and advised the roundhouse force there, that Unit 16B would be returned to Barstow on Train 124, for the necessary work Carrier did assign ASDE Armstrong to protect Unit 16B Los Angeles to Barstow. Before departure time from Los Angeles, Armstrong found a band missing from a resistor. Not being able to obtain the proper band at Los Angeles, and after departure from Los Angeles, made some temporary adjustments before arrival at Fullerton some 25 miles east of Los Angeles, and upon departing Fullerton he placed the Unit 16B, which was then functioning properly, on the line, and continued operating properly to San Bernardino, where Armstrong left the train, and wired Barstow that permanent repairs should be made at first opportunity.

It is noted that the Organization bases its claim on the contention that work was performed at Los Angeles, and the trouble was corrected at Los Angeles before departure of Train No. 124.

Carrier takes the position that Diesel Unit 16B was not operating properly while coupled to Train No. 19, on October 16, 1962. That contacts on movable shunts had been removed by an ASDE employe before leaving Train No. 19 at San Bernardino. This resulted in reducing the engine speed to Run 6, which resulted in Unit 16B being a disabled unit into Los Angeles. At San Bernardino the ASDE notified both Barstow and Los Angeles. Carrier determined that Unit No. 16B would return to Barstow for repairs since Los Angeles did not have the proper equipment to test the Unit under load. That it had the right to make the choice where the necessary work could be performed with proper equipment.

Under the record here Carrier chose to have Unit 16B returned to Barstow. ASDE Armstrong was assigned to check all diesel units including 16B, on Train No. 124. That by making examination before leaving Los Angeles, and after departure he made some temporary adjustments, which restored the Unit to normal operation under load before arrival at Fullerton. On arrival at San Bernardino, Armstrong left the train and advised Barstow of temporary repairs he had made, and suggested permanent repairs be made at the first opportunity.

We are of the opinion that Carrier had a right under the provisions of the Agreement to assign ASDE Armstrong to inspect Unit 16B at Los Angeles, and after the train departed Los Angeles, he made some adjustments with Unit under load, before arrival at Fullerton had the Unit in operation and left the train at San Bernardino, and notified Barstow of his recommendation for permanent repairs.

No electrician work was performed on the Unit 16B at Los Angeles, and the Unit did not become operative until it was tested under load conditions, then adjustments were made.

Carrier had a right to assign ASDE Armstrong to ride Unit 16B departing Los Angeles, the work performed was properly performed enroute with the Unit under load, and he made temporary adjustments.

Electricians at Los Angeles were not used and the Unit was returned to Barstow, at the discretion of Carrier.

The facts here do not merit a sustaining award.

AWARD

Claim denied as per foregoing Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1966.