

Award No. 5180
Docket No. 4948
2-AT&SF-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

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—Coast Lines

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the Agreement, the Carrier erred when they assigned Communications Department Electrician Helper, Mr. T. Cox to fill position of Electrician Non-licensed Electronic Technician, Barstow, on the dates of October 2nd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 21st, 23rd, and 24th, 1963.

2. That accordingly the Carrier be ordered to compensate Mr. J. J. Quesada, electrician and non-licensed electronic technician, eight (8) hours at his regular time and one-half rate for the days of October 2nd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th, 21st, 23rd and 24th, 1963, account of this wrong assignment.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. J. Quesada, hereinafter referred to as the Claimant, is an hourly rated electrician regularly employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, in the Mechanical Department as an electrician. The Claimant is currently holding a Mechanical Department position supervised by the Communications Department, as an Electronic Technician, non-licensed. Prior to June 1, 1953, all of the type of work in this dispute was supervised by the Mechanical Department Supervision.

This dispute has been handled with all Carrier officers authorized to handle disputes, including the highest designated officer, all of whom declined to adjust it.

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

POSITION OF THE EMPLOYEES: It is submitted that under the provisions of the current working Agreement, most particularly Rule 29(a), reading in part as follows:

Adjustment Board have consistently held that the proper compensation for work not performed is at the pro rata rate.

In conclusion, the Carrier submits that the claim is wholly without merit or support of the Agreement rules, for the reasons stated herein and respectfully requests that the Employees' claim be denied, in its entirety.

(Exhibits not reproduced).

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 respective 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.

On behalf of Non-licensed Electronic Technician, Mr. J. J. Quezada, working in the radio shop at Barstow, California, the Employees filed claim at time and one-half rate for seventeen days, beginning October 2 and ending October 24, 1963. It was alleged that the claim arose because Mr. T. Cox, an Electrician Helper, was assigned to fill the position of Mr. C. S. Jarvis, a Non-licensed Electronic Technician, who was assigned to service in the same shop as Mr. Quezada but on a different shift. The vacancy in Mr. Jarvis' assignment arose due to his having been granted a leave of absence for more than 30 days commencing September 26, 1963.

From the record it appears that this vacancy was bulletined for seniority choice September 18, 1963, pursuant to Memorandum of Agreement No. 8, paragraph 4-a; but, there being no applicants for the vacancy, it was again bulletined October 9, 1963 to electricians of the Communications and Mechanical Departments, as provided in paragraph 3-b of Memorandum of Agreement No. 8. Mechanical Department Electrician Jimenez was the successful applicant and was placed on the vacancy October 24, 1963.

Also, from the record we learn that it was during the period September 26, the date Jarvis' leave of absence began, until October 24, when the successful applicant Jimenez, took over the vacancy, that Carrier had used Electrician Helper Cox on a temporary basis for the work concerned. However, it appears that, contrary to Employees' claim for 17 days, only 14 work days were involved in the dates enumerated on behalf of Claimant for the reason that October 2 and October 23 were not scheduled work days and October 24 was worked by successful applicant Jimenez.

We have been referred to the following rules of the agreement between the parties and controlling the instant dispute:

29(a) — under "Assignment of Work".

91 — under "Electrical Workers' Special Rules —
Electrical Workers' Qualifications."

118 — under "Special Rules — Communications Department."

Memorandum of Agreement No. 8, 1-b —
"Non-licensed Electronic Technicians."

(same) "B. Assignment of Work."

We have considered with care the arguments advanced by the opposing parties concerning interpretation of these rules and asserted proper application thereof to the facts before us and it is our conclusion that the upgrading of Electrician Helper Cox to the classification of Non-licensed Electronic Technician was a violation of the Agreement. See Second Division Award 1878. But also here, as there held, we do not find that compensation for the Claimant is justified under the circumstances of this case where it appears that he worked his assignment as a Non-licensed Electronic Technician without any loss in earnings during the entire period here concerned.

AWARD

Claim sustained as modified last above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.