Award No. 5340
Docket No. 5148
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement at Burnside Shop, Chicago, Illinois, when the Carrier's Supervisors did perform Electricians' work on the second and third of January, 1965.

2. That accordingly the Carrier be ordered to compensate the twenty-three (23) Electricians working on the day shift and who have seniority on the 1965 Burnside seniority roster, for sixteen (16) hours pay at the overtime rate, to be equally divided between them.

EMPLOYES' STATEMENT OF FACTS: Twenty-three (23) Electricians working the day shift at the Burnside Shop seniority point, as listed on the 1965 seniority roster, hereinafter referred to as the Claimants, were employed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier.

Claimants' duties are to perform all work coming under the Special Rules Classification of Electricians and all other work generally recognized as Electricians' work.

The electricians' seniority roster for the Burnside Shop, dated January 1, 1965, which was signed by Shop Superintendent L. R. Barron and posted by J. F. Stewart, at 10:05 A. M., January 4, 1965, lists the Claimants. See attachment marked as Exhibit A.

On January 2, 1965, the Carrier started installing public address systems and door circuits in Suburban Cars at Burnside Shops. On this same date four (4) supervisors used tools, soldered connections, measured and cut wire loom, and installed wire in wire mold conduit.

On January 3, 1965, five (5) supervisors performed the same kind of work outlined in the above paragraph.

The findings of Second Division Awards 1638, 2722, 3967, and 4083, Third Division Awards 7212 and 8527 and First Division Awards 6578, 8251, and 15865, among others, are all to the same effect. There is no penalty rule applicable to the present dispute and the penalty requested by the brotherhood could not be granted without amending the agreement between the parties, an act beyond the power of the Division. Accordingly, the Division must deny the claim even if a claim identifying the claimant was filed and a violation had occurred.

SUMMARY

We have shown proper claim was not filed. The claimants cannot be reasonably identified. The brotherhood did not remedy this defect by saying that every man on the seniority roster was damaged by supervisors performing about three hours' work. The Division should hold against the brotherhood for this reason alone.

Furthermore, the agreement was not violated. All that occurred was that on a few occasions, a supervisor, in the normal exercise of this duties, borrowed one or two tools from an electrician who was having trouble with the new work and showed him how to do it properly. The supervisor did nothing more than instruct the man — something that happens thousands of times daily in the railroad industry.

It is well-established that a supervisor may perform 'craft" work in connection with his duties. Rule 33, in fact, specifically recognizes this. Instructing employes is a vital part of a supervisor's job. It is only common sense to conclude from this that a supervisor has the right to do "craft" work in connection with his duty to instruct employes.

Finally, even if the claim were not defective and even if the agreement had been violated, the monetary claim could not be sustained. If the supervisors had not done the work, the electricians who were watching them would have done it. The electricians did not lose compensation by reason of not being used to do the work. If they had been used all that would have happened is that they would have been paid for working instead of watching.

We ask the Division to sustain the company's position by denying the claim.

(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 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 Carrier has made timely objection to the Board's consideration of this dispute on the merits on the grounds that the claim is barred for failure

of the Employes to identify the claimants involved in accordance with the requirements of the time limit rule.

On the facts of this particular case, the Board finds no support for the Carrier's objection. Unlike those other cases cited by the Carrier, here the Claimants are readily ascertainable and identified by means of an attachment to the Employes' Submission listing their names, birth dates and seniority dates. (Employes' Exhibit A.) Accordingly the objection is overruled.

On the merits, it appears that the dispositive question is whether or not certain work performed by the Carrier's supervisors on January 2 and 3, 1965, was an infringement of the contractual rights of Electricians under the basic agreement in effect at that time. (Agreement effective April 1, 1935 as amended December 16, 1943, and September 1, 1949.)

The work performed by the supervisors was in connection with certain suburban passenger car modifications which consisted of installing a microphone at the cab end, a jumper cable outlet at both ends and loudspeakers in the vestibules and in the middle of the passenger compartments. Eight electricians, eight carmen, and two carmen helpers were assigned to the job. The work of the electricians consisted, in the main, of stringing pre-cut wires, connecting and soldering them, and installing jumper cable receptacles.

According to the Employes, four supervisors were present on January 2 and five on January 3, not to instruct the work force but actually to perform the necessary work in order to expedite completion of the job.

On the other hand, the Carrier insists the supervisors performed very limited work for instructional purposes only.

Rule 33 of the Agreement in evidence reads, in pertinent part, as follows:

> "None but mechanics or apprentices regularly employed as such, shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employes.
>
> This rule does not prohibit foremen in the exercise of their duties from performing work."

Rule 117, "Classification of Electrician," reserves electrical work of the kind here involved to employes of the electrician craft.

Article III of the National Agreement of September 25, 1964, (effective November 1, 1964) provides:

> "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foreman or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.
>
> If any question arises as to the amount of craft work being performed by supervisory employes, a joint check shall be made at the request of the General Chairman of the organizations affected. Any

disputes over the application of this rule shall be handled as provided hereinafter.

An incumbent supervisor who assumed his present position prior to October 15, 1962, at a point where no mechanic is employed, may be retained in his present position. However, his replacements shall be subject to the preceding paragraphs of this rule."

This Division has heretofore ruled upon the question of whether Article III, supra, supersedes the assignment of work rules of the basic agreement. In our Award 5242, Carmen and the Elgin, Joliet and Eastern Railway Company, with Referee Howard A. Johnson participating, we held that Article III does not supersede such rules; that it "'. . . merely supplements the Rule by placing a limit on the amount of craft work to be performed by supervisory employes at points where no mechanics are employed; but it makes no reference to the provision of Rule 30 which recognizes the right of foremen to perform work in the exercise of their duties, and contains no provision inconsistent therewith." In the interest of consistent interpretation and application of agreement rules, the Board agrees with the foregoing findings and holds that they are controlling here. Consequently, the Employes' contention that the second paragraph of Rule 33 of the agreement in effect when this dispute arose was superseded and abrogated by the aforesaid Article III cannot be sustained.

Accordingly, if the facts of record establish that the supervisory personnel here involved did no more than perform a minimal amount of craft work incidental to instructing the electricians in the proper performance of their duties, there would be no violation of the cited rules. The burden of showing by competent evidence that more than that was done by the supervisors rests upon the Employes. The record reveals that they consistently **asserted** this as a fact; something which was just as consistently **denied** by the Carrier. Neither party has offered any proof to substantiate his respective contention. Mere assertions and allegations, when denied, do not constitute evidence. We accordingly hold that the Employes, upon whom the burden of proof rests, have failed to show by competent evidence that the supervisors in this case exceeded the permissible limits imposed by the contract in performing craft work on January 2 and 3, 1965.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1968.

LABOR MEMBERS' DISSENT TO AWARD NO. 5340

We dissent to this Award as the majority failed to recognize the fact that Rule 33 of the Agreement, effective November 1, 1964, was amended to delete the paragraph reading:

"This rule does not prohibit foremen in the exercise of their duties from performing work."

Even though it was pointed out to them that the Carrier recognized this fact when they reprinted the Agreement with Rule 33 as amended effective November 1, 1964 showing this quoted part of old Rule 33 no longer in the Rule. A letter under date of December 7, 1967, was made a part of the record and reads as follows:

"December 7, 1967

Mr. William Coburn
1430 K. Street, N.W.
Washington, D. C. 20005

Dear Mr. Coburn:

This is in reference to the Carrier Member's Memorandum for the Referee in Docket No. 5148 that was submitted to you by Mr. Melberg on December 5, 1967.

Item V appearing on page 3 reads as follows:

'Contrary to what the Organization suggests on page 7 of its rebuttal submission, the second paragraph of Rule 33 was not amended, deleted or superseded by Article III of the September 25, 1964 National Agreement. There is not a single word in that article which even remotely suggests such a happening; the application of that article is specifically limited to the use of so-called "working foremen" at points where no mechanics are employed and, therefore, did nothing more than amend the first paragraph of Schedule Rule 33, which dealt with the same subject. The provisions of that article can be interpreted and applied completely free of any conflict with the provisions of the second paragraph of Schedule Rule 33, as that paragraph read at the time the instant dispute arose. See Second Division **Award No. 5242, supra.**'

This is the most distorted statement of facts that I have ever heard of. The fact of the matter is that the employes served a notice on the Carrier to amend Rule 33 for the purpose of removing the language, "This rule does not prohibit foremen in the exercise of their duties from performing work." As a result of this notice, the Agreement of September 25, 1964, Articles III and IV, was agreed to and became effective November 1, 1964, thereby amending Rule 33 to read, effective November 1, 1964, as follows:

'ARTICLE III.

ASSIGNMENT OF WORK – USE OF SUPERVISORS

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or

other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

If any question arises as to the amount of craft work being performed by supervisory employes, a joint check shall be made at the request of the General Chairmen of the organizations affected. Any disputes over the application of this rule shall be handled as provided hereinafter.

An incumbent supervisor who assumed his present position prior to October 14, 1962, at a point where no mechanic is employed, may be retained in his present position. However, his replacements shall be subject to the preceding paragraphs of this rule.

ARTICLE IV. OUTLYING POINTS

At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft, and any dispute over the designation of the craft to perform the available work shall be handled as follows: At the request of the General Chairman of any craft the parties will undertake a joint check of the work done at the point. If the dispute is not resolved by agreement it shall be handled as hereinafter provided and pending the disposition of the dispute the carrier may proceed with or continue its designation.

Existing rules or practices on individual properties may be retained by the organizations by giving a notice to the carriers involved at any time within 90 days after the date of this agreement.'

The Carrier knows and understands this because when they had the Agreement reprinted showing that the Agreement was effective April 1, 1935, amended December 16, 1943, amended September 1, 1949, amended June 1, 1966, Rule 33 in this reprinted Agreement reflected the amendment quoted above. Therefore, the statements of the employes in their rebuttal on pages 7 and 8 are true statements of facts.

The incidents in this dispute occurred on January 2 and 3, 1965, therefore, the amended Rule 33 effective November 1, 1964, was in effect and the portion which Mr. Melberg is alleging was in effect, 'This rule does not prohibit foremen in the exercise of their duties from performing work,' was no longer in effect as the parties agreed to delete it in the amended Rule 33.

I am instructing Executive Secretary McCarthy to see that you receive the Agreement which is currently in effect on the property

and was in effect prior to the date that this claim involves along with the Agreement of September 25, 1964.

Very truly yours,

/s/ E. J. McDermott
E. J. McDermott
Labor Member —
Second Division"

Therefore, Award No. 5340 is palpably erroneous.

E. J. McDermott
C. E. Bagwell
D. S. Anderson
R. E. Stenzinger
O. L. Wertz

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