Award No. 5364
Docket No. 5222
2-CUT-EW-'68

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.**

---

## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

## THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current and controlling agreements electricians R. Mider, C. H. Willenbrink, O. Cox, L. Thompson, J. Wilder, G. Seibel, C. Loomis and A. Melton were improperly denied their rights to perform electrical work at the Cincinnati Union Terminal Company, Cincinnati, Ohio on June 7, 1965 and June 8, 1965.

2. That accordingly the Carrier be ordered to make these employes R. Mider, C. H. Willenbrink, O. Cox, L. Thompson, J. Wilder, G. Seibel, C. Loomis and A. Melton whole by compensating them each eight (8) hours at the punitive rate of pay.

EMPLOYES' STATEMENT OF FACTS: R. Mider, C. H. Willenbrink, O. Cox, L. Thompson, J. Wilder, G. Seibel, C. Loomis and A. Melton, hereinafter referred to as the Claimants, are regularly employed as electricians by the Cincinnati Union Terminal Company, hereinafter referred to as the Carrier.

On June 7, 1965 and June 8, 1965, the Carrier assigned seven (7) tenant line employes (C&O and B&O) and two (2) Cincinnati and Suburban Bell Telephone Company employes to perform the electrical work on Special Train cars, namely, N&W 536, N&W 538, N&W 512, C&O 825, C&O 824, C&O 834, C&O 321 and four (4) Southern R. R. flat cars.

The electrical work required the stringing of electrical wiring throughout the entire Special Train Cars, the installation of radios and Public Address System speakers and amplifiers and the connecting of the wiring to N&W Coach 536 electrical panel for 110-Volt power supply for the operation of the equipment; also the installation of Ship-to-Shore telephone and aerial.

The Claimants have an established seniority on the electrician seniority roster, and by virtue of same, the Claimants have the right to perform

32. And if, as counsel for the Brotherhood contends, there exists within the industry a long established and accepted custom to pay what would amount to a windfall for contract violations such as here occurred, such custom was not established by finding, nor requested as a finding, in the procedures before either the Board or the District Court. We conclude that the District Court correctly determined that the instant case is governed by the general law of damages relating to contracts; that one injured by breach of an employment contract is limited to the amount he would have earned under the contract less such sums as he in fact earned. Atlantic Coast Line R. Co. v. Brotherhood of Ry. Clerks, 4 Cir., 210 F. 2d 812, 815; United Protective Workers of America, Local No. 2 v. Ford Motor Co., 7 Cir., 223 F. 2d 49, 53–54, 48 A.L.R. 2d 1285. Absent actual loss, recovery is properly limited to nominal damages. Oklahoma Natural Gas Corp. v. Municipal Gas Co., 10 Cir., 113 F. 2d 308; Norwood Lumber Corp. v. McKean, 3 Cir., 153 F. 2d 753; 5 Williston, Contracts (rev. ed.) § 1139A.'

Since it is uncontroverted that the individual claimants suffered no actual monetary loss from the violation of the collective bargaining agreement, it is concluded that plaintiff's recovery is limited to nominal damages."

## CONCLUSION

The Carrier has shown that the claimed work did not belong to this Carrier nor was its performance contracted to this Carrier by the owner. As the Carrier can only give to its employes that work to perform which belongs to it or which is contracted to it, the employes had no right to this work under the terms of their agreement. In addition, the claimants did not have the exclusive right to such work, nor were they qualified under applicable FCC regulations to its performance. For these reasons we respectfully request this claim be denied in its entirety.

In view of the Awards of the Board and the decisions of the Courts quoted heretofore, which state that the imposition of a penalty exceeds the Board's jurisdiction, we respectfully request that this Board deny Item 2 of the Organization's Claim in its entirety.

All data submitted in support of Carrier's position has been made known to the Employes and made a part of the particular question in dispute.

(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.

On June 8, 1965, the Cincinnati Railroad Community Service Committee, the Greater Cincinnati Chamber of Commerce, and the Cincinnati Gas & Electric Company co-sponsored an educational and promotional tour of the industrial development of the Greater Cincinnati area. For the purpose of this tour, certain radio, public address and telephone equipment was installed on the special train made up for the tour. Respondent is a union station facility utilized as a unified passenger terminal in Cincinnati, Ohio by various railway companies who specifically authorize respondent company to perform certain servicing of equipment.

On June 7 and June 8, 1965 seven (7) tenant line employes (C&O and B&O) and two (2) Cincinnati and Suburban Bell Telephone Company employes performed electrical work on the special tour train by installing radio, public address and telephone equipment. Claimants contend that they had the right to perform this work at the time this work was performed.

In order to find that this work belonged to Claimants, we must first find that such work was either the exclusive business of respondent or that respondent controlled such work. The record does not support such a finding. This Board finds that Respondent, in this instance, could only give to its employes that work to perform on other railroad's equipment which the Terminal Company was authorized by the owning carrier to perform while the equipment was on Terminal property. There is no evidence in the record indicating that Respondent was authorized to perform the work involved in this dispute on the special train; therefore, Respondent could neither control or assign such work to its employes.

In keeping with the principle set out in Second Division Award 1706, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.