

Award No. 5408

Docket No. 5163

2-MP-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. 2, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement on Saturday, May 1, 1965, when they required Telephone Maintainer W. L. Schumacher to take company truck and drive Western Union Lineman from Poplar Bluff, Missouri to a point north of DeSoto, Missouri and return (distance of 126 miles each way) but denied him compensation in the amount of ten hours (10') for this date, Saturday, May 1, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Telephone Maintainer W. L. Schumacher in the amount of ten hours (10') at the pro rata rate for Saturday, May 1, 1965, as provided in the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. L. Schumacher, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, as Telephone Maintainer at Poplar Bluff, Missouri, and is compensated in line with Rule 107(c), reading in pertinent part:

"(c) (Western and Southern Districts only). Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. **Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. * * ***" (Emphasis ours.)

On Saturday, May 1, 1965, Telephone Maintainer Schumacher was given the following message by Wire Chief Tom Burns in Poplar Bluff, Missouri:

"POPLAR BLUFF, MO., MAY 1st, 1965

"WLS
NHC POPLAR BLUFF

Upon arrival at the scene of the trouble near DeSoto, the two men found No. 913 broken and wrapped around No. 64-65. The broken wire could be easily pulled off the grounded wire by the Western Union lineman thereby correcting the difficulty on No. 64-65. He could then restring the broken wire. It turned out the cause of the failure was not difficult to correct and it may be claimant did not assist the lineman, even though it is a practice for the two to assist each other. The important point, however, is that the cause of the difficulty was not known when claimant was instructed to go with the lineman. It is a practice for telephone maintainers to report for duty when a failure of communication occurs which must be corrected. This includes pole line failures. The fact that clearing the trouble did not prove difficult does not diminish the extent of the emergency conditions which existed by reason of the communication failure.

The failure of the pair of wires between St. Louis and Poplar Bluff known as No. 64-65 caused an emergency situation which had to be corrected. It was claimant's duty as a telephone maintainer to take whatever steps were necessary to correct the difficulty. In this case, it was his duty to go with the Western Union lineman to find out what had caused the failure and to repair the line. Such emergency service is not only contemplated clearly by Rule 107(c), but has been the practice on this property for as long as telephone maintainers have been employed.

For the reasons stated above, the claim for additional compensation is not supported by the Agreement and is entirely lacking in merit. The claim must be denied.

All matters contained herein have been the subject matter of correspondence and/or conference.

Oral hearing is not requested.

(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.

Claimant was a monthly-rated telephone maintainer working Monday through Friday, with Saturday as his standby day. On Saturday, May 1, 1965, Claimant was given the following message:

"POPLAR BLUFF, MO. MAY 1ST, 1965

WLS
NHC POPLAR BLUFF

WLS CARRY NHC TO CLEAR TROUBLE ON 64-65 913 ABOUT
4 MILES NORTH OF DESOTO. AUTHORITY MR. FRENCH.

TWB 10 AM"

Claimant complied with these instructions. Upon arrival at the site of the trouble it was discovered that Western Union wire No. 913 had broken and wrapped around Wire Nos. 64-65, causing a short circuit. No. 913 was restored to its proper position thus clearing the line trouble. The temporary patch that had been made was discontinued and service over lines 64-65 was restored.

Rule 107(c) of the Agreement, reads, in pertinent part, as follows:

"(c) (Western and Southern Districts only.) Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. * * *"

The Employee alleges a violation of the foregoing rule under the facts present here. Their position, in summary, appears to be that no emergency existed as the circuits had already been patched out when Claimant was directed to proceed to the repair site; that claimant's only instruction was to "carry" the Western Union Lineman to that point; that Claimant performed none of the duties of a telephone maintainer after arrival at the site.

The Carrier's position appears to be that it was not known at the time of the issuance of instructions to the Claimant whether or not the trouble was due to a defect in the Carrier's or the Western Union's lines; that it was reasonable and prudent, therefore, to send both Claimant and the Western Union man to the trouble site; that the message given Claimant, reasonably construed, contemplated that both men should take such action as was necessary to make repairs and restore service.

After a careful analysis of the evidence, the Board is of the opinion that the action of the Carrier was no more than might be expected of a reasonable and prudent man acting under similar circumstances. It had no reliable information on the precise cause of the trouble and took the necessary precautions to insure that the defect was promptly corrected and reliable service restored. We are not persuaded that the wording of the message given Claimant lends itself to the interpretation advanced by the Employee that it meant he was to act solely as a chauffeur for the Western Union man. Reasonably read, it seems to us to mean that Claimant was instructed to take the Western Union man with him to clear the trouble.

Whether or not an emergency existed in this instance is something upon which reasonable minds might differ. But the facts do show that a break on the lines resulted in defective communications between the Carrier's office

in St. Louis, Missouri, and points in other states and that the patch around the line break was not effective. This condition called for prompt and effective line inspection and repairs. The Carrier accordingly took what is considered at the time to be the most effective way to meet the problem. It dispatched not one but two trouble-shooters to the scene. Obviously one of the primary duties of a telephone maintainer is to restore communications whenever a failure occurs. That is all that was intended to be required of the Claimant here.

The rule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.