

Award No. 6117
Docket No. 5968
2-T&P-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Texas and Pacific Railway Company, hereinafter referred to as the Carrier, violated the terms and provisions of Article III, Assignment of Work of the September 25, 1964 Agreement and Rule 72 of the September 1, 1949 Agreement between the Texas and Pacific Railway Company and System Federation No. 121, Railway Employees' Department Mechanical Section thereof, when the Carrier used other than an Electrical Worker to perform electricians' work on April 28, 1969.

2. That accordingly, the Carrier be ordered to pay Electrician R. B. Wynne, a 4-hour call at the pro rata rate of pay account of Carrier denying Electrician R. B. Wynne, hereinafter referred to as the Claimant, his contractual rights to perform electrical work in the Marshall Shops, Marshall, Texas, where Claimant is employed as an Electrician.

EMPLOYEES' STATEMENT OF FACTS: On the morning of April 28, 1969, District Engineer D. J. Bertel instructed Signal Foreman Roy Perry to disconnect the conduit and wires feeding to the Buffing Machine which was located in the Marshall Shops, Marshall, Texas. This machine was removed and put into service in Fort Worth, Texas. Mr. Roy Perry had to have managerial skill and know-how to disconnect this circuit as it is 220 volts. Electrical tools were also used in the performance of this work.

It is also a fact that Electrician Wynne is qualified to perform this type work and was available for call on April 28, 1969.

POSITION OF EMPLOYEES: It is the position of the employes that the carrier violated Article III, Assignment of Work - Use of Supervisors, of the September 25, 1964 Agreement and Rule 72 of the current controlling agree-

size of the job in disconnecting an electrical appliance. The work does not require any particular skill and is not performed solely by electricians. Signalmen in the maintenance of the electrical signals of other electrical equipment on the railroad are working daily with equipment which requires the performance of such work. It is a small task which was easily performed by the signal foreman in a very short time.

In addition to the fact that the work in dispute is trivial in nature, we point out that the grinder was simply cut free from the switch box. There was no maintenance, repairing, rebuilding, inspecting or installing of any electrical equipment. The electricians' classification of work rule (which was Rule 72 in the old book and now is Rule 74 of the reprinted book) states that electricians' work shall consist of "maintaining, repairing, rebuilding, inspecting and installing the electric wiring of" the various pieces of equipment listed in the rule. The rule does not attempt to cover the mere disconnecting of an electrical appliance or machine. Such work is frequently performed by other employes in connection with their work. Shop craft employes from time to time will connect or disconnect wiring, pipes and other connectors when incidental to their work. See Award 2223. Here the purpose was to remove the machine so that it could be sent to Ft. Worth, and cutting the wires loose was incidental to moving the machine. The electricians are not claiming the work of moving the machine, but simply complained because an electrician was not used to cut the electrical connections free from the switch box.

This dispute is similar to disputes involving other than electricians connecting and disconnecting battery charges. For example, in Award 2804, a clerk connected a battery charger to electric lift trucks by removing a plug on the battery in the truck, plugging in a plug from the Charge-O-Matic machine, setting a timer thereon and pulling a switch. The machine automatically cut off when the "charge" was completed. In denying the claim in behalf of an electrician, your Board held:

"It is clearly evident that no repair, maintenance, inspection or testing is involved in the performance of the above described operation. No special skill or training is required, so therefore we cannot conclude that this work is covered by the Scope Rule of the effective agreement, and therefore subject to performance by electricians, to the exclusion of all others. See Award 2064."

Your Board need not come to a consideration of Rule 72, since the work was not performed in the Maintenance of Equipment Department. As fully explained above, the Shop Craft Agreement, including the electricians' classifications of work rule, is not applicable since it applies only to those performing the work specified in the agreement in the Maintenance of Equipment Department. We have, nevertheless, shown that the work in dispute was trivial and does not justify a monetary claim for four hours in any event, and we have further shown that the rule relied on does not attempt to cover the incidental work of cutting a machine loose from a switch box. It follows that the claim is not supported by the rule relied on and is entirely lacking in merit and should be denied.

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 claim herein considered is a four hour call for Electrician R. B. Wynne, on the grounds that in violation of the Agreement, the work of disconnecting conduit and wires connected to an electrically driven buffing machine, was performed by an employe other than an Electrician.

Carrier denies violation of the Agreement on grounds that: Work was not performed in a "Reclamation Plant and Maintenance of Equipment Department," but rather in a Signal Shop, and therefore the Agreement and Rule 74 cited by organization is not applicable; that work merely consisted of work essential to remove a buffing machine, and that such work is not specifically referred to in Rule 74; that the Organization has not shown by evidence that cutting wires is "work generally recognized as electrician's work," and finally that the work in question is trivial in nature.

The Organization contends that Rule 74 defines its work jurisdiction, and that as conduit work is specifically referred to in Rule 74, the work in question was improperly assigned.

The Board notes that the August 1, 1969 Craft Agreement on its face states:

"It is understood that these rules shall apply only to those performing the work as specified in this Agreement in the Reclamation Plant, and Maintenance of Equipment Department."

The Board believes that the above was not designed to mean that Signal Department employes are to perform in the Signal Department the work set forth in Rule 74, defining the work jurisdiction of Electricians.

That conduit work was performed causes the Board to conclude that the work in question falls squarely within Rule 74.

The Board cannot accept carrier's interpretation of Rule 74, namely, that because the word "removal" is not specifically mentioned in Rule 74, any employe may remove or cut wires, and that any employe may perform such electrical work (as defined in Rule 74) that may be required to move, lift or lower electrical equipment (as defined in Rule 74). Such an interpretation would provide sanction to have such Rule 74 work performed by employes other than Electricians.

The Board does not believe that the omission from Rule 74 of "the words 'remove, move, raise, or lower'" was intended to permit assignment of such electrical work as defined in Rule 74 which might be necessary in the connection with removing, moving, lowering or raising electrical equipment as defined in Rule 74 to employes other than Electricians. Nor does the Board

believe that the scope language on the frontis page of the craft Agreement constitutes a bar to the assignment of work to Electricians when and if such work is work defined in Rule 74, even if the work occurs in some location other than the Reclamation Plant or Maintenance of Equipment Department.

The two conclusions above, are based on the fact that the parties have established in their several contracts the boundaries of work of each of several crafts: Having done so, the Organization is entitled to protection of the integrity of its work jurisdiction from violations either done willfully or inadvertently. No emergency existed. The Board notes that erroneous work assignments which are contrary to the Agreement usually occur in small increments, and involve an amount of work which may seem to be trivial in scope. However, in this case we find no grounds for invocation of the de minimus rule. Despite such scope, each craft is entitled to protection of its work jurisdiction, and because conduit work clearly falls within Rule 74, the Board upholds the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.