Award No. 6124
Docket No. 5990
2-HB&T-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Houston Belt & Terminal Railway Company violated the Agreement of September 1, 1949 when they assigned a Signal Department employe to perform work within the scope of the Mechanical Department, Electrical Workers.

2. That accordingly, the Carrier be ordered to compensate Electrician T. J. Atkinson in the amount of four (4) hours at the pro rata rate for May 23, 1969 and Electrician Roy Cone for eight (8) hours at the pro rata rate for May 24, 1969.

EMPLOYES' STATEMENT OF FACTS: T. J. Atkinson and Roy Cone, hereinafter referred to as the claimants, are employed by the Houston Belt & Railway Company, hereinafter referred to as the carrier, as electricians, in the mechanical department at Houston, Texas.

On May 23, 1969 the carrier assigned Signal Department employe Paul Semien to assist Electrician Travis Fuller in running a new power line at the north end of the Settegast Yards, and on Saturday, May 24, 1969, Paul Semien was again assigned to assist Travis Fuller. Paul Semien, an employe assigned to the signal department was instructed to perform work within the scope of the Electrical Workers Mechanical Department, inconsistent with the agreement of September 1, 1949, as amended.

POSITION OF EMPLOYES: Memorandum Agreement, on page 45 of the September 1, 1949 controlling agreement reads:

"It is agreed that the electrical work now being performed by Travis Fuller and K. S. Pengelly, which comprises electrical work in both the Maintenance of Way and the Maintenance of Equipment Departments, and that portion of the work known as Maintenance of Equipment Department will be within the scope of the Mechanical

installing switchboards, meters, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle light equipment and electric lighting fixtures; winding armatures, fields, magnets, coils, rotors, transformers and starting compensators; wiring at shops and all conduit work in connection therewith; wiring steam and electric locomotives, passenger train and motor cars, and electric tractors and trucks; and all other work generally recognized as electricians' work."

This certainly applies to maintenance of equipment at shop and cannot be construed as electrician lineman work. All journeyman electricians work under the Supervision of Master Electrician A. T. Wallace on the Houston Belt and Terminal Railway Company.

Certainly the Memorandum Agreement speaks for itself in the case in hand clearly showing the two different qualifications for bidding in jobs, also it was necessary for the carrier to go elsewhere and hire a new man in order to meet all the requirements to perform the lineman electrician work as was done in the Van Horn hiring. Also Paul Semien was used due to being the only qualified pole climber available on May 23, 24, 1969.

We respectfully request that the claim be declined.

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 May 23, 1969, about 4:00 P. M., it was reported that a company service line, both electrical and communication, was down at the north end of Settegast Yard. The Carrier assigned a Signal Department employe to assist an electrician in running a new power line. The same assignment was again repeated on May 24, 1969.

Our study of the record indicates that the Carrier violated the Memorandum Agreement signed at Houston in April, 1945 and included in the controlling Agreement of September 1, 1949, which reads:

"It is agreed that the electrical work now being performed by Travis Fuller and K. S. Pengelly, which comprises electrical work in both the Maintenance of Way and the Maintenance of Equipment Departments, and that portion of the work known as Maintenance of Equipment Department **will be within the scope of the Mechanical Department, Electrical Workers, and that they will be carried on the Electricians' seniority roster** in the Mechanical Department." (Emphasis ours.)

It is firmly settled in labor law that work embraced within the scope of an agreement cannot, as a rule, be removed therefrom and assigned to or performed by employes not covered by the agreement. This agreement cannot be lawfully or unilaterally changed by either party.

The claim is on behalf of the Electrical Workers who were improperly deprived of their contractual right to perform work covered by the agreement.

After careful study of the record and the agreement we find the claim should be sustained in its entirety and the relief requested by the Claimants so granted.

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.

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