



Award No. 6204
Docket No. 6055
2-MP-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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of June 1, 1960 and the September 25, 1964 Agreement, when they assigned Signal Foreman Smith and Signalman Crawford to perform Telephone Maintainers work.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Telephone Maintainers C. R. Qualls and G. C. Burton in the amount of two hours and forty minutes each at the rate of time and one-half for July 29, 1969.

EMPLOYEES' STATEMENT OF FACT: Telephone Maintainers C. R. Qualls and G. C. Burton, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Kansas City, Missouri.

On June 27, 1969 there was a derailment at Kansas City, Missouri causing excessive damage to a line pole supporting a communication cable in the hump service, as well as the power line. After the derailment was cleared, it was necessary to straighten the line pole and in so doing the communication cable was removed from the pole, re-wrapped with spinning wire and then replaced after the pole had been placed in its proper upright position. Ignoring the fact that this was Telephone Maintainer's work, Supervisor Highfill instructed Signal Foreman Smith and Signalman Crawford to perform the above work, both of whom are assigned to the Signal Department and who hold no seniority as Telephone Maintainers. Additionally, a foreman performing work is not consistent with the agreement of June 1, 1960 or the September 25, 1964 agreement.

I would like to call your Honorable Board's attention to the Claimants' Exhibit D which clearly states (that):

rules applicable to monthly rated telephone maintainers prior to September 1, 1949, shall continue without change." (Emphasis ours.)

The foregoing rule provides that telephone maintainers will be paid a monthly rate "to cover all services rendered except as hereinafter provided." The exceptions apply only to the sixth and seventh days of the work week. The work in dispute in this docket occurred on Tuesday, July 29, 1969, which was one of the first five work days of both of the claimants. Accordingly, the monthly rate covers all services performed by the claimants on that date and claimant would not have been compensated additionally if used to perform the hour and one-half work required to rehang the cable.

Your Board has pointed out in previous awards that telephone maintainers are not entitled to additional compensation in such cases. For example, in Award 4086 (Howard A. Johnson) your Board found:

"Telephone maintainers receive a monthly salary to cover all services rendered, including overtime on the first five days of the work week. All the work in question was done on those days, one item at Midnight and the others at times not stated. Each claimant worked and was paid for the day to which his part of the claim relates, so that he can have sustained no financial loss."

Your Board in Award 4086 denied the claim. The same result follows here. Claimants have been allowed their monthly rate for July, 1969, and are not entitled to additional compensation.

Although the claim clearly is not supported by the rules, we also point out that there is no basis for selecting telephone maintainers Qualls and Burton as claimants since Qualls was in Nebraska City when the work was performed and Burton had worked the night before and was due to work again that same night and was not on duty to perform the work. Telephone maintainers were on duty during the day on the date of claim in the Kansas City terminal and could have been used if such work had been contracted to telephone maintainers exclusively.

For the reasons stated, the claim is not supported by the rules 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 record in this dispute does not disclose, nor has this Board been able to locate in the files of the Adjustment Board any rule or memorandum agreement detailing the work jurisdiction of Telephone Maintainners. Examination of Rule 107 (c) discloses that it is bereft of a detailed delineation of the work jurisdiction of Telephone Maintainners.

Organization cites violation of Rule 26 and of the June 1, 1960 agreement. Yet the implementation or invocation of said rule requires as a prerequisite, an extant rule or agreement defining the work jurisdiction of Telephone Maintainers. As noted above, this Board has neither such a rule or an agreement before it, and thus the Organization's claimed violation cannot be tested, and therefore said claim necessarily lacks inherent merit.

The Organization also cites violation of Article 3 of the September 25, 1964 Agreement as having been violated. The record does not disclose any proof that a foreman performed craft duties in excess of that specifically provided for and allowed in Article 3. Therefore this aspect of Organization's claim is found lacking merit in that Organization has not supplied the requisite measure of proof of the existence of a violation.

The Organization places great weight, in advancing its claim, on a statement contained in Carrier's letter of January 7, 1970, to Electrician's General Chairman, as follows:

"While there is no dispute that signalmen, on the ground making repairs to communication lines, did perform a certain amount of work that should have been performed by Telephone Maintainers . . ."

Such a unilateral definition of work jurisdiction by Carrier's representative, even though not specifically denied or contradicted in Carrier's brief, is not for a number of reasons sufficient, standing by itself, to warrant an Award sustaining the claim. Among those reasons, is that the Board is not disposed to establish a precedent of defining work jurisdiction solely on the grounds of a single statement by a management representative.

AWARD

Claim denied for reasons set forth in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.