

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 25, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated Rules 26, 27, 86, 87 and 88 of the April 1, 1945 controlling agreement on Wednesday, September 25, 1974, when Foreman Shoemake assigned himself to perform electrical work belonging to the electricians holding all contractual rights to said work.
2. That, accordingly, the Terminal Railroad Association of St. Louis compensate B & B Electrician C. F. Hofer four and one-half hours (4 1/2') at time and one-half for Wednesday, September 25, 1974.
3. In addition to money amounts claimed herein the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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 September 25, 1974, the Carrier instituted an assignment for the installation of new flood lights, ballasts and other related equipment on two ninety-foot floodlight towers at its Madison Yard. The work was assigned to four Electricians, represented by the petitioning Organization, and was under the supervision of Electrician Foreman Shoemake, a member of the American Railway Supervisors Association. Foreman Shoemake and the four Electricians started work at the Madison Yard site at approximately 8:30 A.M. At approximately 10:25 A.M. Foreman Shoemake was notified that there was need for an Electrician at the Carrier's Union Station; and at 10:30 the Foreman sent Electrician Goodrich to perform this work. Mr. Goodrich

5.

6.

7.

8.

9.

10.

returned to the Madison Yard project at 3:00 P.M. During the period of time Mr. Goodrich was away, two Electricians were working "high", and one Electrician, Mr. Lee, was left on the ground to hoist weighty fixtures and materials to them. The Carrier states in its letter of March 27, 1975:

"...Mr. Shoemake had to continually correct Mr. Lee's action in raising the lights. It was necessary in the interest of safety to the men and equipment for Mr. Shoemake to assist and only to that extent."

The Statement of the three Electricians present, dated October 24, 1975 states:

"After Electrician Goodrich was reassigned he (Foreman Shoemake) assisted Electrician Lee in pulling flood-light fixtures up to the floodlight tower to Electricians Roberts and Bryan."

Pursuant to Section 3 First (i) of the Railway Labor Act a Third Party notice was given to the American Railway Supervisors Association concerning the instant claim. The Association chose not to appear or participate in the dispute.

The Organization contends that Foreman Shoemake assigned himself to replace a mechanic and to perform electrical work belonging to the B & B Electricians under the Agreement; and that B & B Electrician C. F. Hofer, the Claimant, should be paid for the time in question, 4 1/2 hours, at the time and one-half rate.

The Carrier contends that Rule 27 specifically allows foreman to perform work in the exercise of their duties. The Carrier contends that the hoisting function in question was a one man job, but that Electrician Lee was physically unable to perform the simple function in a safe and efficient manner. The Carrier contends that hoisting fixtures is not work exclusively reserved to Electricians. The Carrier further contends that the Organization has the burden of proving that the work in question was not foremen's work.

Contrary to the Carrier's contention that hoisting fixtures or lights is not exclusively Electricians' work, we find that such work is an integral part of the installation and wiring of electrical lighting fixtures and is exclusively reserved to the Electricians' Craft under Rule 86.

Rule 27 provides in part that none but mechanics or apprentices shall do mechanics work. This rule further provides that the rule does not prohibit foremen from performing work in the exercise of their duties. The Carrier contends that the Organization has not carried its burden of proof to show that the work in question was not foreman's work. We find that the Carrier, not the Organization has the burden of proof in the matter of an affirmative defense; we find that the Carrier has not submitted any probative evidence of either rule or practice that the work in question is foremen's



work. It must be remembered that the hoisting work took place over a four and a half hour period and the foreman continuously assisted in the hoisting operation. The assignment started out as a four person assignment on the 25th and ended up as a four person assignment after 3:00 P.M. The record indicates, including the continuous participation of the foreman in the hoisting operation, that the Foreman was not supervising, instructing or demonstrating, but rather that he was performing mechanic's work. Argument that an employee was not physically able to do the work of his craft, regardless of proof or lack of proof on the matter, cannot justify a foreman, in a non-emergency situation over a four and a half hour period, performing mechanic's work.

We shall sustain the claim. However, the portion of the claim requesting interest is denied as per a long line of Awards of this Board.

A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of September, 1977.

5

6

7

8

9

10