CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7610
SECOND DIVISION Docket No. 7559-T
2-SPT-EW-'78

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That on May 24, 1977, at the San Antonio Diesel Service Shop, the Southern Pacific Railroad Company (Texas and Louisiana Lines) violated the provisions of Rule 29 and 108 of the schedule agreement when they assigned Machinist N. L. Schueneman to disconnect, remove and reapply axle alternators to journal housing of wheels 1 and 3 on Diesel Unit SP 8759.

2. That, accordingly, for this violation, the Southern Pacific Railroad Company (Texas and Louisiana Lines) be ordered to pay Electrician V. W. Etheredge, who was first out for call on the overtime board, four (4) hours straight time pay.

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 facts involved in this dispute are not at issue. On May 24, 1977, a machinist at Carrier's San Antonio maintenance facility was assigned the task of turning the wheels of a diesel unit. As part of the work, which consumed in total about eight hours, the machinist was required to disconnect and remove two alternators from their wheel positions and upon completion of the turning operation reapply and reconnect them. The alternators were not repaired and their removal and reapplication took approximately forty minutes. As a result, Petitioner filed a formal grievance in behalf of Claimant, who was first out on the Overtime Board for call.

The Organization relies on Rule 29 which indicates that none but mechanics may perform the mechanics' work specified in the special work of each craft. Also, Petitioner relies on Rule 108 (a), which provides:

"(a) Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switch boards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment; inside telegraph and telephone equipment, electric clocks, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors, and trucks. Cables, cable splicers, high tension powerhouse and sub-station operators, high tension linemen, powerhouse attendants operating and maintaining electric generating powerhouse equipment; electric crane operators for cranes of 40 tons capacity or over; and all other work generally recognized as electricians' work."

Carrier relies on the Incidental Work Rule, which states:

"At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.

> "If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

The Organization argues that the removal and reapplication of the alternators was within the specific meaning of Rule 108 (a) and was exclusively the work of electricians. It is stated that the fact that this work has been by custom and practice, as well as by agreement, the exclusive work of the electricians has never been disputed by Carrier and furthermore the Machinist organization has disclaimed jurisdiction of the work. It is stated by Petitioner that Carrier's act of assigning the task to a machinist on the date in question was a direct violation of the agreement.

With respect to the incidental service rule, Petitioner states that until the incident in this dispute, it was never applied to the San Antonio Diesel Shops and those shops are a major repair point and not for that reason subject to the incidental service rule. In support of the position that San Antonio is not a "running repair" point, the Organization points out that the work on the diesel unit involved in this dispute took about four days, far in excess of the twenty four hours specified in Rule 56 - Dead Work. That rule provides:

> "Dead work means all work on an engine which cannot be handled within twenty-four (24) hours by the regularly assigned running repair forces maintained at point where the question arises."

Petitioner concludes that the repair work on the engine herein was dead work and hence was not covered by the incidental service rule.

Carrier argues that the work of removing and replacing the alternators was clearly incidental to the main task of turning the wheels and consequently within the purview of the incidental work rule. Carrier argues that the work of turning wheels is a common repair performed at running repair points. Also, Carrier maintained that the facility was indeed a running repair point and the reference to Rule 56 was incorrect in that Rule 56 was one of the Machinist special rules and not applicable to this dispute. While Carrier has no quarrel with the provisions of Rules 29 and 108 and

their significance is recognized, Carrier maintains that the incidental work rule supercedes those rules.

There is no question about the nature of the work in this dispute. The work of turning the wheels was clearly the major task and the removal and replacement of the alternators was a minor and incidental task required for the purpose of giving the mechanic access to the primary assignment. The work on the alternators did not fall into the categories of "... overhauling, repairing, modifying or otherwise improving equipment..." Petitioner's argument that Carrier had not enforced the incidental work rule at this location for a number of years is not persuasive. It has long been held in this industry that no hiatus or past practice can bar the enforcement of clear and unambiguous rights under an agreement. In Award 6025, this Board said:

> "....It should be noted that a conflicting past practice, no matter how long endured, does not serve to alter or nullify clear and unambiguous contract language."

There remains the question of the applicability of the incidental work rule. Petitioner avers that since this is not a running repair facility the rule does not apply and cites Rule 56 in support of that position. Carrier merely denies the fact and the applicability of Rule 56. It is our conclusion that Rule 56 is a special rule applicable to Machinists and is not relevant to this dispute and certainly not controlling. It is clear that there are many facilities which have the characteristics of both running repair and major repair facilities. The Organization has submitted nothing but argument to support its contentions on this aspect of the dispute, and has failed to bear its burden of proof of its allegation. For this reason we have no factual basis for questioning the character of the facility.

Based on the entire record of this matter, we must conclude that the situation involved is precisely the circumstance envisioned by the parties agreeing to the incidental work rule. The claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1978.