

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers  
{  
{ Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railway Company violated Rules 22 (a) and (b), 23, 100, and 102 of the September 1, 1949 controlling agreement when they assigned Machinists E. E. Williams to perform electricians' work on Friday, June 9, 1978, thus, depriving Electrician R. E. Netrow his contractual rights under the provisions of the Agreement at Houston, Texas.
2. That, accordingly, Carrier be ordered to compensate Electrician R. E. Netrow two hours and forth minutes (2'40") at the overtime rate for Friday, June 9, 1978.
3. In addition to the 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.

The Organization contends that carrier violated the agreement when it assigned a machinist to operate the overhead crane in carrier's Diesel Shop at Houston, Texas, on Friday afternoon, June 9, 1978. The organization claims a call (two hours and forty minutes at the overtime rate) for Electrician R. E. Netrow, claimant in this case.

Carrier states that on June 9, 1978, it found itself in a position wherein it needed to use the overhead crane to finish the job of changing out a number one traction motor on engine 54. Since there was not an available electrician to operate the crane, a machinist was assigned the task. He ran the crane, completed the job, and engine 54 was put in service for the middle track on that date. Carrier claims that it knew it needed an electrician to operate the crane on

June 9, 1978 because the regular electrician assigned to the day shift, Leo Wilson, could not climb into the crane, account he had a bad knee. In anticipation of the need to use the crane to change the traction motor, carrier called Electrician Wooldridge to come in. He could not accept the call, account illness. It then contacted Electrician Netrow. Netrow would not accept the call, account it was his day off. Carrier thereupon held over Electrician C. R. Wilson, the 11:00 p.m. to 7:00 a.m. man, on the day shift to operate the crane.

At about 12:30 p.m., C. R. Wilson was called home on an emergency, account his child was sick. This left the day shift without an electrician to run the crane from 12:30 p.m. to 3:00 p.m. Carrier needed to complete the job of changing the traction motor. It needed the crane to remove the jacks and allow the engine to go back to service. It had made every effort possible to obtain an electrician to do the work. No electrician was available. It assigned a machinist to do the job. Carrier argued in its submission to this Board that it authorized this work under the incidental work rule.

The organization denies that carrier called either Wooldridge or Netrow to come into work on June 9, 1978. It also asserts that carrier did not advance the incidental work rule argument on the property. Thus, it is barred from doing so at this time.

The board is presented with a number of conflicting statements. While we have repeatedly stated that we do not make credibility judgments, it is impossible to arrive at a decision in this case if one party's story is not accepted as being more logical and reasonable than the other.

After a thorough review and discussion of the case, this board is of the opinion that carrier made a more than reasonable effort to have an electrician available to operate the crane, but to no avail. Electricians at the location were just not available and the one who was on duty could not perform the required task. Given these facts, carrier should not be required to shut down its operation, waiting for an electrician to come to work, or to pay a penalty because it relied on someone other than an electrician to do the work.

This is not to say, however, that this board in any way has moved away from its decision in Award 8078 and Public Law Board No. 1476. The facts in this case are in almost direct opposition to the facts present when Award 8078 was rendered.

The board also states that the incidental work rule argument was not properly before it and it has not been considered in this decision.

#### A W A R D

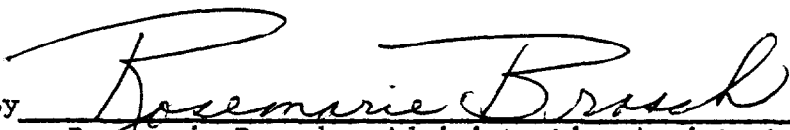
Claim denied.

Form 1  
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Award No. 8472  
Docket No. 8250-T  
2-HB&T-EW-'80

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 22nd day of October, 1980.