Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8558
Docket No. 8372
2-SCL-EW-'81

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That in the Waycross, Georgia Back Shops on November 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29 & 30, 1977 and December 1, 2, & 5, 1977, the Seaboard Coast Line Railroad Company violated the Controlling Agreement when Electrician Helper was assigned to operate overhead traveling crane instead of calling and/or notifying Overhead Traveling Crane Operator who was available to operate the overhead traveling crane on the above mentioned dates.

2. That Overhead Traveling Crane Operator R. D. Murray be compensated 8½ hours at the punitive rate of pay each date for the dates of November 8, 15, 21 & 25, 1977 and December 1, 1977; Overhead Traveling Crane Operator J. A. Peacock be compensated 8½ hours at the punitive rate of pay on each date for the dates of November 9, 16, 22 & 28, 1977 and December 2, 1977; Overhead Traveling Crane Operator L. Herrin be compensated 8½ hours at the punitive rate of pay each date for the dates of November 10, 17, 23 & 29, 1977 and December 5, 1977; Overhead Traveling Crane Operator M. King be compensated 8½ hours at the punitive rate of pay each date for the dates of November 11 & 18, 1977; and Overhead Traveling Crane Operator J. T.Taylor be compensated 8½ hours at the punitive rate of pay for each for the dates of November 14 & 30, 1977 by reason of Electrician Helper being assigned to operate the overhead traveling crane when Overhead Traveling Crane Operators were available in violation of Rules 15, 95 and Appendix "Q" of the current Agreement.

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 pivotal question in this dispute is whether or not Carrier violated Agreement Rule 95, paragraph (A) and (C) when it assigned an electrician helper to perform the work of the regularly assigned crane operator, who was off sick, on the claimed dates.

Claimants contend that the aforesaid assignment specifically violates Rule 95 (C) while Carrier avers that the parties negotiated understanding vis this Rule, permitted the utilization of an electrician helper. Rule 95 (C) which is germane to this impasse is verbatively referenced as follows:

> "When necessary to fill electric crane operator positions, electrician helpers will be used, if there are no electric crane operators available."

In our review of this case, we will discuss at first the new materials and arguments contained in Carrier's ex parte submission. Careful analysis of the on situs exchange of correspondence, particularly Carrier's January 12 and June 5, 1978 declination letters, does not reveal that it mentioned the withdrawn May, 1968 claim or that clearly definable past practice supported its position. It is a new argument, which we are precluded from considering under Circular No. 1 procedures and we must therefore exclude it.

Correlatively, when we consider the dispute's substantive merits we find the Claimants' arguments were persuasive. Rule 95 (C) is specific and unambiguous. It permits the assignment of electrician helpers, when no electric crane operators are available. Claimants, to be sure, did work their regular assignments on the days when the electrician helper was used, but that would not prevent their being called for overtime assignments. Carrier argues in its January 12, 1978 letter, that it was the negotiated understanding that electrician helpers would be used as relied crane operator, but it did not offer proof that a regularly assigned crane operator, who performed his regular work, would not be considered as being available for a relief assignment that same day. If the word "available" as contextually stated in Rule 95 (C) was meant to exclude regularly assigned crane operators from performing such work, we have no evidence that it was, in fact, consistently observed by the parties. There is an absence of acquiescence. Claimants had noted the 14 claims regarding availability and notification, which Carrier had acknowledged in 1971. (General Chairman's February 27, 1978 letter). The fact specifics, admittedly, were different, but not the conceptual emphasis. Plain and unambiguous words are undisputed facts. When the language used is clear and explicit, we are constrained to give effect to the thought expressed by the words used. An affirmatory defense are obligatory upon Carrier, and we do not find that it adequately met this proof requirement. We will sustain the claim.

A W A R D

Claim sustained.

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 7th day of January, 1981.