

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., 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 (a), and 100 of the September 1, 1949 controlling agreement when Relief Foreman W. A. Pollard assigned himself by responding to a trouble call and made repairs to the wiring on engine BN 5725 from 11:00 p.m. to 12 midnight thereby performing electricians' work Wednesday, November 22, 1978, thus, depriving Electrician Wilson of his contractual rights under the provisions of the Agreement at Houston, Texas.
2. That, accordingly, Carrier be ordered to compensate Electrician Wilson two hours and forty minutes (2'40") at the overtime rate for November 22, 1978.
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.

The Claimant, Electrician G. R. Wilson, was on duty commencing 11 p.m. on November 22, 1978. He was directed by his Foreman to respond to a call concerning a headlight malfunction on a locomotive. Upon responding to the call, he found a Foreman (who had just completed his shift and was off duty) at the locomotive. According to the Organization, the Foreman had "replaced a wire that had burnt off the headlight resistors", and the Organization argues that this is in violation of Rule 23, the Electricians' classification of work rule, and Rule 23 (a), Assignment of Work, which reads as follows:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foreman at points where no mechanics are employed."

The Carrier admits that the Foreman responded to the call, but that he found an "improper utilization of switches" and he then placed the "electrical switches in proper position" and the "headlights functioned properly".

The Board finds no concrete evidence (aside from the Organization's allegation) that the Foreman replaced a wire, nor does the Board find any proof (other than the Foreman's own statement) that nothing more than a realignment of switches was involved. Whichever was the actual case, the Board is persuaded that work performed properly belonged in the Electrician craft. A trouble call was made by the locomotive engineer. The Foreman on duty after 11 p.m. sent an electrician to respond. The off-duty Foreman did more than simply determine what needed to be done. Rule 100 states that Electricians' work shall consist of (among other items) "repairing, ... inspecting and installing all electrical wiring of ... electric headlights ..."

The Carrier's view of the matter is not assisted by the fact that the Foreman in question was already off duty at the time of incident.

As a remedy, the Organization seeks two hours and forty minutes pay at the overtime rate for the Claimant. The Carrier argues, to the contrary, that the Claimant was on duty and under pay at the time and is thus not entitled to extra compensation, even if a rules violation is found. The Board has previously found, however, that penalty is appropriate in that work was performed by other than the proper craft in violation of rules and that some measurement is necessary to determine the loss of work to the craft. As noted in Award No. 5341 (Dolnick):

"The two Claimants were on duty at the Dupo yard during the hour for which claim is made. Carrier argues that since no rule in the Agreement provides for payment where no pecuniary loss or damage is shown, the penalty claim should be denied. Carrier violated Article V of the Agreement. If no penalty is assessed for that violation, it is an invitation to the Carrier to continue to violate it with impunity. The explicit provisions of Article V could become meaningless in similar situations. This is, clearly, not the purpose of any agreement. A penalty in the amount requested here is just and proper."

Since there was no actual overtime call-in involved, however, the Organization's claim is excessive.

The Organization also makes a claim for six per cent interest. In view of the minimal amount of the monetary award here involved and based on the predominant findings of the Second Division that such interest payment is not appropriate, the Board finds no need to examine this issue further.

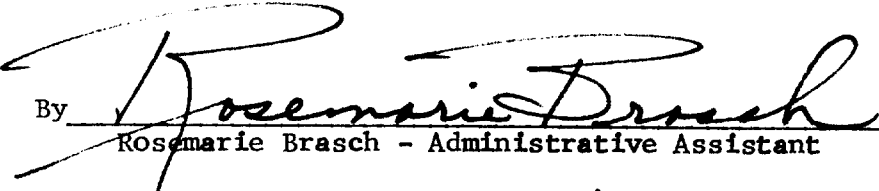
A W A R D

Claim sustained to the extent that the Claimant shall receive one hour's pay at straight-time rate.

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 4th day of March, 1981.