

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(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 Machinist E. E. Williams to perform electricians' work on Friday, May 5, 1978, thus, depriving Electrician O. A. Wooldridge his contractual rights under the provisions of the Agreement at Houston, Texas.
2. That, accordingly, Carrier be ordered to compensate Electrician O. A. Wooldridge eight hours (8') at the overtime rate for Friday, May 5, 1978.
3. In addition to the money amount 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 Friday, May 5, 1978, Carrier's Engine 33 was in the Milby Street Diesel Shop for the changing of power assemblies. The work of changing the power assemblies took place on the first shift between the hours of 7:00 A.M. and 3:00 P.M., and was accomplished by using the overhead electric travelling crane, which, according to Rules 100 and 102, is to be operated by an Electrician. At this time, Carrier did have an Electrician on duty, one Mr. Leo Wilson, but he was not physically able to climb into the cab of the overhead crane due to his having had knee surgery. As a result, Carrier submits Roundhouse Foreman, Mr. B. R. Blalock, attempted to contact the Claimant, Mr. O. A. Wooldridge by telephone to call him in to perform the work but was unable to reach him. Carrier also contends Blalock attempted to reach the other two Electricians assigned to the Diesel Shop, Mr. C. R. Wilson and Mr. R. E. Netrow, but they too were unreachable. Left with no other alternative, Carrier finally assigned the disputed work to an employee of the Machinist Craft.

The Organization contends the Claimant was at his residence for the entire time preceeding and throughout most of the first shift as this was a scheduled work day for him and he was assigned second shift. The Organization maintains Claimant never received a telephone call from Foreman Blalock even though Claimant himself related he expected to be called. In support of its position, the Organization produced a written statement from Claimant regarding his never having received a telephone call on the day in question and noting the fact the telephone company had no record of any such call. Furthermore, Claimant had his telephone checked by the telephone company to determine if there was something wrong with the phone and there was not. The Organization argues that the work in question, that of operating the overhead electric travelling crane, is work exclusively reserved to employees of the Electrician Craft and that Carrier violated the aforecited Rules of the Controlling Agreement when it assigned the subject work to an employee of the Machinist Craft.

Carrier argues it had on duty an Electrician but that he was unable to perform the subject work. Taking this into account, Carrier further argues it made every attempt to secure the services of the other Electricians including the Claimant but to no avail. In support of this assertion, Carrier produced a written statement from Foreman Blalock relating his effor of attempting to reach the Claimant at his residence. Furthermore, the Carrier notes, the telephone company would not have a record of such a call being placed to the Claimant's residence as the call was not completed. Carrier submits it should not be placed in the position of having to assume an additional monetary burden for dual service by being required to have a second Electrician on duty during the first shift. As the work needed to be performed during the hours in question and being unable to reach the other regular Electricians, Carrier assigned Machinist E. E. Williams to the job. Carrier maintains it was within its rights to make such assignment and that there was no violation of the Agreement because the work performed by Williams was of an incidental nature to the overall task of disconnecting the power assemblies and then pulling them.

Upon a careful and comprehensive review of all the evidence before the Board, it is our judgment that both the Organization and the Carrier have failed to produce substantive proof to support their respective positions. We reiterate a pronouncement we have espoused in numerous other cases and that is that mere assertion does not constitute probative evidence. On this basis we have no other alternative than to rule to dismiss the claim.

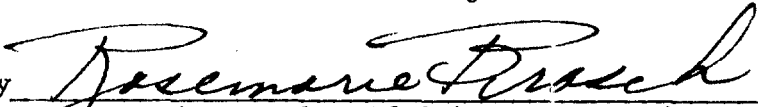
A W A R D

Claim dismissed.

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 28th day of October, 1981.