

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Matt Dziemiela employed by the Carrier was deprived of his contractual right to the work when the Carrier used Foreman L. Fenical on August 21, 1978 to perform the work.
2. That accordingly, the Carrier be ordered to compensate Electrician Matt Dziemiela two (2) hours pay at time and one-half (1½) of his prevailing rate of pay for the date involved in 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.

Claimant, an electrician at Amtrak's Brighton Park Turbo Facility in Chicago, urges this Board to award him two hours pay, at the overtime rate, when a supervisor allegedly performed electricians' work. The basic facts are not in dispute. On August 21, 1978, the carrier discovered that a headlight on a R.V.G. power car was not operating. Because the car was needed at Union Station, the power car departed Brighton Park during daylight hours before the headlight was repaired. An electrician was not on the train but a Foreman and a Field Technician were on board. The Foreman repaired the defective headlight after the car left Brighton Park.

We note that the organization submitted its second level appeal to the carrier on September 1, 1978 and the carrier did not deny the appeal in writing until November 20, 1978 which was after the expiration of the sixty day limitation period set forth in Rule 24(b). Pursuant to Rule 24(b) if the carrier fails to timely deny the claim, the claim should be allowed as presented. However, this contention was first raised before this Board during oral argument. Inasmuch as the lack of timeliness in denying the claim was not brought up on the property or argued in the parties' submission, this Board is precluded from considering the organization's assertion that the claim was not timely denied at the second level of appeal.

On the merits, the organization argues that the foreman performed the work of a journeyman electrician which is exclusively reserved to electrical workers under the Classification Rule (Rule 1). The organization also contends that servicing train car headlights is work historically, traditionally and exclusively reserved to the electrical craft. The carrier defends the Foreman's actions because: 1.) the work was not exclusively reserved to electricians; 2.) the repair of the headlight was, at the most, a de minimis violation; 3.) the defect constituted an unforeseen exigency requiring the carrier to take immediate corrective action; and 4.) this claimant suffered no pecuniary harm as a result of the Foreman's actions.

Repairing headlights on power cars is work covered by Rule 1 of the applicable agreement. In this case, under ordinary circumstances, an electrical worker should have been used to repair the defective headlight. From the record, we find insubstantial evidence that a genuine emergency occurred. The power car could have been held at Brighton Park or an electrician could have accompanied the car to Union Station. Thus, the foreman violated the classification rule when he performed electrical work on August 21, 1978.

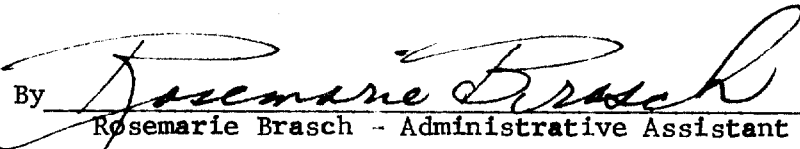
However, even though an electrician was entitled to perform the disputed work, the organization has not proffered evidence demonstrating that this particular claimant suffered any monetary loss. Rule 13, relied on by the organization for the measure of damages, refers to overtime pay and pay for a call. In this case, the record contains no evidence that this claimant would have worked overtime or would have been called to repair the headlight. Nor does the record disclose a past practice of paying compensation for similar violations of the agreement. Absent a showing that the claimant would have worked beyond his regular assigned hours, he has not incurred any loss in wages as long as he was fully compensated for his usual straight time shift. Second Division Award No. 3967 (Johnson); Special Board of Adjustment No. 570, Award No. 356 (Gilden). Rule 13 does not provide for a penalty payment so despite the foreman's performance of work traditionally reserved to electrical workers, the lack of any pecuniary injury compels us to deny the claim.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.