Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8815
Docket No. 8660
2-MP-EW-'81

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rules 1 and 24 (a) of the Communications Agreement effective August 1, 1977; Memorandum of August 12, 1960.d; and, Article III of the September 25, 1964 Agreement when they assigned Electrician L. R. Hedeen to perform Communications Maintainers' work, thus denying Communications Maintainer R. D. Babylon at Kansas City, his contractual rights under the Agreements and his rights in the division of work under the Memorandum, on August 26, 1978.

2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer R. D. Babylon two and seven-tenths hours (2.7') at the overtime rate for August 26, 1978.

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 were given due notice of hearing thereon.

The record indicates that the claimant was employed by the Carrier as a Communications Maintainer with assigned work week and bulletined hours Monday through Friday, 7:00 a.m. to 3:00 p.m., stand-by day - Saturday, rest day - Sunday; headquarters - Kansas City, Missouri.

Mr. L. R. Hedeen is employed by the Carrier as an Electrician with assigned work week and bulletined hours, Saturday through Wednesday, 8:00 a.m. to 4:00 p.m. rest days - Thursday and Friday.

The Foreman on duty August 26, 1978 did not notify the General Foreman at the Carrier's Diesel Shop in Kansas City, Missouri, of the need for a Communications Maintainer to replace the missing radio hand set on MP Unit 3214, but instead, instructed Electrician Hedeen to remove the radio hand set on MP Unit 3214. The work performed by Electrician Hedeen is exclusively Communications Maintainers' work under the Agreement and a Memorandum reached with the Carrier.

The Organization contends violation of the rules governing Scope (Rule 1) and Seniority (Rule 24 (a)) which rules establish the exclusivity of the work in question which reads:

"RULE 1. SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employes in the Communications Department specified in this Agreement engaged in the construction, installation, maintenance, repairs, inspection, dismantling and removal of telephone and telegraph transmission and switching systems and associated equipment such as telephone, telegraph and teletype equipment, fixed and mobile radio used for railroad operational purposes, (including microwave systems), closed circuit television, interoffice communications systems, yard speaker systems, and all work generally recognized as communications work; provided, however, that this will not prevent others acting under the direction of a Communications Supervisor or District Officer from utilizing spare equipment limited to plug-in modular units requiring no specialized knowledge or skills to restore service in cases of emergency.

NOTE: Nothing above shall prohibit a Supervisor in the Communications Department from inspecting and testing communications equipment and circuits in the performance of his duties."

and Rule 24 (a) - Seniority of the same Agreement which reads:

"RULE 24. SENIORITY

(a) Seniority of employes in each class covered by this Agreement shall be coextensive with the scope of this Agreement."

The Carrier raises as a defense the contentions that the replacement of modular type handsets is in accordance with the Scope Rule of the Agreement of August 1, 1977, covering the claimant and is in accordance with the system-wide practice on the property since modular type hand sets have been used.

The arrangement whereby train and engine employes, Mechanical Department employes, including supervisors, replaced defective hand sets is system-wide. At all locations where runs originate, hand sets are replaced by any employe available the Carrier asserts.

The Organization relies upon a memorandum of August 12, 1960 issued in the settlement of a dispute with respect to the allocation of work between electricians

and "telephone maintainers" (currently known as "communication maintainers). Said memorandum was signed by the two union Chairmen and embodied as page 27 in the Parties' Agreement of August 1, 1977. It provides:

> "We have agreed between division of work with reference to electricians and telephone maintainers captioned rolling stock. On the rolling stock we have agreed that the original installation complete, with the exception of the radio units enclosed and locked in the radio rack, will be electricians' work.
>
> Regarding maintenance, electricians will maintain all the conduit and the wiring, including the primary power supply. Telephone maintainers' work will include maintenance, repair, replacement of hand sets, antennae, speakers and other equipment relative to radio apparatus.
>
> In the seven telephone maintainers would require assistance in changing out antennae, electricians will assist them on these jobs."

The Parties disagree as to meaning and application of what was meant to be covered by the reference to "plug-in modular units". The Carrier asserts that the "plug-in handset" is a plug-in modular within the meaning of Rule 1. Conversely, the Organization contends the "plug-in modular" citation in Rule 1 references a "computer card/element" with its own purpose and does not apply to radio hand sets.

The Parties further dispute what the "pracrice" in the system has been concerning the replacement of hand sets since the "plug-in variety was introduced some years ago.

The record indicates that in the past certain radios had the hand sets wired to the control head as compared to the currently used quick release "outlet and plug-in" species.

The language of Rule 1 of the Agreement, concerning "plug-in modular units", does not specifically delimit the species to a single particular "computer card" as advanced by the Organization. Conversely, it does specify special types that require "no specialized knowledge o skills" to replace. The condition precedent to replace such units, however, is contractually constrained to those circumstances necessary "to restore service in case of emergency".

The Carrier argues that the failure to have an operative radio "creates an emergency if the train is delayed by reason of the crew refusing to leave the terminal". The Board in Third Division Award 10965 (Dorsey) defined an emergency as an unforeseen combination of circumstances which calls for immediate action.

The 1960 memorandum was explicit in classifying the "replacement of hand sets" as work of the then "telephone maintainers". This memorandum was not rescinded or superseded by the 1977 Agreement, but rather the Parties elected to make it part of their Agreement. Both become controlling in the instant dispute.

The record fails to indicate any effort of the Carrier to advance its "de minimus" defense on the merits at the lower levels; consequently, such argument must, therefore, be deemed barred.

The Board notes that Rule 1 and the 1960 memorandum must be read in "pari materia" and each construed in reference to one another. Together they stipulate that the "replacement of hand sets" is the normal work of the "communications maintainers", but in an emergency those hand sets, which are of a "plug-in modular" species, can be replaced by "others", under the direction of a Communications Supervisor or District Officer.

The evidence presented in the instant dispute is found to be inconclusive as to whether or not a bona fide emergency existed sufficient to permit the discretionary action taken by the Carrier. The record is not clear if the disputed work of replacing an inoperative hand set was a known condition requiring routine replacement or an emergency under Rule 1; requiring action necessary to restore service.

The Carrier has failed to prove its assertion and defense by competent evidence that an "emergency" existed. Absent some proof by the Carrier or an emergency, which required prompt action and which could not wait to be handled as routine communication maintainers work as per the agreement, that Agreement is found to have been violated.

Absent the showing of an emergency, and given the Board's conclusion that the Carrier violated the Agreement, this determination by the Board should serve as a caution against such assignments in the future. However, the evidence reveals that the disputed work is sufficiently minimal so that the Board finds without prejudice that no compensatory award is deemed warranted for this particular infraction.

A W A R D

Claim sustained to the degree and limits specified above.

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 10th day of November, 1981.