

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  
( Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the current agreements pertaining to assigning Electricians to use watt meter for checking the standing wave and power output of mobile radios on diesel locomotives between November 29, 1977 and December 15, 1977. Also used Supervisor to transport radios from Cumberland, Maryland to Clifton Forge, Virginia.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to additionally compensate the following Electronic Maintainers: Terry Loveless and S. E. Shannon, 332 hours account using Electricians for checking the standing wave and power output on mobile radios. Also, 16 hours pay for December 14, 1977, account using Supervisors to transport radios.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 October 31, 1977, the Carrier's Chief Mechanical Officer at Huntington, West Virginia issued detailed written instructions covering the procedure for exchanging locomotive radios. Shop Electricians in the Mechanical Department were assigned to: 1) remove and turn in old radios; 2) put in a new radio; 3) check each radio's standing wave ratio and power output with a watt meter; and 4) lock the radio to the base and complete the information requested on the application tag. During the period from November 29, 1977 to December 15, 1977, the Shop Electricians at Clifton Forge placed eighty-three radios into the Carrier's locomotives in compliance with the Mechanical Officer's instructions.

The Organization brings this claim on behalf of two Electronic Maintainers for 332 hours of pay (four hours for each radio) contending the task of checking and testing the radios with the watt meter is exclusively reserved to Electronic Maintainers in the Communication Department under the June 29, 1962 Memorandum Agreement. Alternatively, the Organization argues that regardless of the

division of work terms of the June 29, 1962 Agreement, Federal Communication Commission ("FCC") regulations mandate that the Carrier used licensed Electronic Maintainers to perform the radio checks and such regulations supersede any applicable rule dividing the work. Also, the Claimants seek sixteen hours of pay because a supervisor transported radios from Cumberland, Maryland to Clifton Forge, Virginia on December 14, 1977.

The Carrier contends the work consisting of testing and checking the radios was properly assigned in accord with both the June 29, 1962 Agreement and FCC regulations. The Carrier asserts the testing was associated with installation of radios in the shop and the entire installation process is reserved to Shop Electricians. As to the transportation of radios, the Carrier argues such work is not exclusively reserved to any craft by either rule or past practice.

The June 29, 1962 Memorandum Agreement divides work between Mechanical Department Electricians and Communication Department employees. Paragraph I(5) of the Agreement provides that the installation and removal of radio equipment in shop areas is reserved to Electricians in the Mechanical Department while maintenance work is to be handled by Communication Department employees. The work in question was an integral part of the total installation process. The checking conducted by Shop Electricians was merely one step of the overall installation project.

Pursuant to the 1975 Engineering Department Maintenance Rules, when a rule or instruction conflicts with a law or regulation, the law or regulation takes precedence. The key word is conflict. The Organization has the burden of proving the Chief Mechanical Officer's instructions conflicted with FCC regulations. In this case, the FCC advised by letter dated February 23, 1978 that transmitter measurements (including measurements of output power and standing wave ratio) incidental to installation may be performed by unlicensed employees so long as frequency controls are inaccessible to the installation workers. The Organization has failed to show any conflict between the FCC's advisory opinion and the Chief Mechanical Officer's instructions. Absent proof of a conflict, the testing and checking could be properly assigned to Electricians in the Mechanical Department under the June 29, 1962 Memorandum Agreement.

As to the transportation of radios, the Organization has conceded that such work is not historically, customarily and exclusively reserved to Electronic Maintainers. Thus, we must deny both portions of this 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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March, 1982.