Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9254
Docket No. 8706
2-MP-EW-'82

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(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 S. D. Vanderlinden to perform Communications Maintainers' work, thus, denying Communications Maintainer G. Spielbush at Kansas City, Missouri his contractual rights under the Agreements and his rights in the division of work under the Memorandum, on November 26, 1978.

2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer G. Spielbush two and seven-tenths hours (2.7') at the overtime rate for November 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 waived right of appearance at hearing thereon.

The Organization contends that Carrier violated Rule 1, Scope, and Rule 24, Seniority, when it instructed Electrician S. D. Vanderlinden to remove the radio hand set from MP Unit 3167 and install the radio hand set on MP Unit 3178. It also asserts that Carrier's action violated a Memorandum between the parties dated August 12, 1960.

Claimant, Glen Spielbush, is a Communication Maintainer assigned to Carrier's Kansas City Terminal Division. Claimant's assigned work week and bulletined hours are Tuesday trhough Saturday, 3:00 P.M. to 11:00 P.M., stand-by day - Sunday, rest day - Monday.

On Sunday, November 26, 1978, Diesel Units 3167 and 3178 were on the service track outside the diesel facility. Diesel units are brought to the service track where they are fueled, sanded, supplied and inspected.

A handset for the radio was needed on Diesel Unit 3178. Outside Pit Foreman Sisk instructed Electrician Vanderbinden to remove the headset from Diesel Unit 3167 and to install the handset on Diesel Unit 3178. This amounted to unplugging the headset on 3167 and then replugging into 3178.

The Organization insists that the work performed by Vanderlinder is exclusively Communications Maintainers work. As such, the Organization seeks two and seven-tenths hours (2.7) at the overtime rate for Claimant, who had that day as his standby day.

Carrier, on the other hand, insists that the assignment of the work to the electrician does not violate the Agreement. First, it claims that Rule 1, Scope, permits Carrier to assign employes, other than Communications Maintainers to replace modular type handsets. Second, Carrier asserts that the assignment here was in conformance with the system-wide practice on the property since modular type handsets have been used.

The primary Rules to be interpreted are Rule 1, Scope, and Rule 24, Seniority. They state:

"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 association equipment, fixed and mobile radio used for railroad operational purposed, (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.

RULE 24. SENIORITY

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

The Organization also rested its claim on a Memorandum of Agreement dated August 12, 1960. It states:

"MEMORANDUM:

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 of 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 event telephone maintainers would require assistance in changing out antennae, electricians will assist them on these jobs."

This identical issue, between these same parties, was recently decided by this Board in Award No. 8810 of this Division. There, we concluded that Rule 1 and the 1960 Memorandum must be read in conjunction with each other:

> "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."

Thus, the proper accommodation between Rule 1 and the 1960 Memorandum has already been determined. Nothing presented here convinces us that our prior interpretation was palpably erroneous. Therefore, consistent with the time honored doctrine of stare decisis, we must conclude that this is the proper meaning of the applicable provisions.

Here, Carrier has failed to prove by competent and probative evidence that an "emergency" existed. Absent such proof, we must conclude that Carrier's action in assigning an electrician to remove the radio hand set from MP Unit 3167 and installing the radio hand set onto MP Unit 3178 was improper.

However, we are persuaded that the Organization's request for a call is improper. The disputed work is sufficiently minimal so that the Board finds that no compensation is warrented for this particular violation. See Award No. 8810.

The Agreement was violated.

A W A R D

Claim sustained to the extent indicated in Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.