

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  
Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 1 and 24(a) of the Communications Agreement effective August 1, 1977; Article III of the September 25, 1964 Agreement when Mr. Jack Storment, Supervisor, did in fact assign himself to work performed exclusively by Communications Maintainer in that between 1:30 P.M. and 2:30 P.M., Wednesday, November 21, 1979 he rewired the Micor-wave channel 3 at Gorham, Illinois.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainer W. Hawkins for Wednesday, November 21, 1979, two hours and forty minutes (2'40") at class 3 overtime.

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.

Prior to November 1979, Carrier began experiencing difficulty on the lower microwave channels on its microwave system located at its base radio stations at Gorham, Benton and Bush, Illinois. On November 19, 1979, in an effort to alleviate the problem, Supervisor J. W. Storment sent Communications Maintainer W. Hawkins to Bush, Maintainer H. Heise to Gorham and Maintainer H. Hawkins to Benton for the purpose of putting the Centralized Traffic Control (CTC) Signal System on Channel 7, a clear channel, in place of Channel 3.

On November 21, 1979, Supervisor Storment made an inspection of the three microwave towers to check on the work performed by the three maintainers two days previous. While at the Gorham base radio station, Supervisor Storment reversed two wires for the modulator and demodulator on Channel 3. Apparently, the pair of wires had been turned over by Maintainer Heise while he worked at Gorham on November 19, 1979.

The Organization maintains that Supervisor Storment acted in violation of Rules 1 and 242 of the Agreement when he rewired the modulator and demodulator

on November 21, 1979. These rules read, in relevant part:

"Rule 1 SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employees 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 communication work;  
...

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 employees in each class covered by this Agreement shall be coextensive with the scope of this Agreement."

According to the Organization, the Scope rule clearly requires that all installation and repair of microwave systems must be performed exclusively by employees covered by the Agreement. Since Supervisors are not covered by the Agreement, the repair of Channel 3 at Gorham could not properly have been done by Supervisor Stormont. Instead, Communications Maintainer W. Hawkins should have been assigned this work. Thus, the Organization seeks compensation for Claimant W. Hawkins for two hours and forty minutes at the Class 3 overtime rate for work which he should have been assigned.

Carrier, on the other hand, insists that there was no violation of the Agreement. It notes that Supervisor Stormont was properly inspecting work performed by Maintainer Heise. In Carrier's view, a necessary element of inspecting of work is the correction of errors committed by unit employees. This is particularly true where the correction was a very simple one which took only fifteen minutes to accomplish.

Furthermore, Carrier points out that Claimant is a monthly rated employee. Therefore, even if Claimant had been instructed to go to Gorham to correct the error, he would not have been additionally compensated, since his monthly rate covers non-emergency repairs of this type. Accordingly, Carrier asks that the claim be denied.

The Scope rule in the Agreement is specific in nature. It clearly indicates that unit members are to repair microwave systems. In addition, the "Note" below the rule suggests that Supervisors may not repair equipment of the type mentioned in the rule. It indicates that the Rule may not prohibit a Supervisor from "inspecting" and "testing" equipment in the performance of his duties. Thus, by omitting such terms as "correcting" and "repairing", the Note implies that the supervisor may neither correct nor repair equipment in the performance of his or her duties.

It would have been relatively simple for the Scope rule to allow repairs and correction of equipment, in addition to inspecting and testing. This the parties chose not to do and they are bound by their Agreement.

As to the issue of a remedy, Carrier argued that none is appropriate since Claimant's monthly rate contemplates performance of the type of work involved in this dispute. We do not agree. It is axiomatic in railway labor relations that a remedy is ordinarily appropriate where an agreement is violated. Here, as a result of Carrier's violation, work performed by Supervisor Stormont should have been assigned to Claimant, thereby increasing his work day.

Inasmuch as the work in question was "ordinary maintenance work", Claimant is entitled to be paid at the time and a half rate in accordance with the requirements of Rule 3 - Monthly Rated Employees. Accordingly, we will order that Claimant be compensated for two hours and forty minutes (a "call") at the class 3 time and a half rate in effect on November 21, 1979.


A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January, 1983.