Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9336
SECOND DIVISION Docket No. 9242-T
2-NRPC-EW-'83

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
(National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That the National Railroad Passenger Corporation (Amtrak) violated the procedural provisions of Rule 24(b) of the current Agreement, as amended effective September 1, 1975 by failing to render a decision in writing on Employes' Claim filed G-38 within the prescribed time limits.

2. That the National Railroad Passenger Corporation (Amtrak) also violated Rule 1 of the current Agreement effective September 1, 1975, as amended, the Implementing Agreement of July 8, 1976 and the Electrical Workers Classification of Work Rule effective October 15, 1960 as contained in the Agreement entered into by and between the Pennsylvania Railroad Company and System Federation No. 152 effective April 1, 1952, when on March 19, 1979 other than Electrical Workers were assigned to perform Electricians' work of removing air conditioning equipment at Carrier's Rensselaer Passenger Station in New York.

3. That accordingly, the National Railroad Passenger Corporation (Amtrak), be ordered to compensate Electrician G. E. Gathen four (4) hours at the pro rata rate of pay.

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.

This claim arises from Carrier's assignment of two Carmen to remove the H.V.A.C. (Heat - Ventillation - Air Conditioning) unit from Power Coach No. 154 at its Albany/Rensselaer, New York facility on March 19, 1979.

The Organization contends that such work should have been performed by Electricians. It asserts that Carrier's assignment of the work to employes of another craft violates Rule 1 of the current Agreement of July 8, 1976 and the Electrical Workers' Classification of Work Rule effective October 15, 1960 as

contained in the Agreement entered into by and between the Pennsylvania Railroad Company and System Federation No. 152 effective April 9, 1952.

These rules provide, in relevant part:

> "Item 5: Implementing Agreement of July 8, 1976.
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> Work of the Albany/Rensselaer Facility will be assigned to and performed by employees of the respective crafts and classes in accordance with the Classification of Work rules on pages 13 through 38 of the Agreement between System Federation No. 152 and the Pennsylvania Railroad dated October 15, 1960. Work at other new Amtrak Facilities, other than those in operation when they were acquired by Amtrak, will be performed as it is to be performed at the new Albany/ Rensselaer facility under this Agreement. Communication work covered by the System Federation 103 Agreement will be performed at Albany/Rensselaer in accordance with the terms of the 'Classification of Work' Rule (copy attached) in that Agreement."
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> "Classification of Work Rule in Agreement between System Federation No. 152 and the Pennsylvania Railroad, dated October 15, 1960
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> VIII Electrical Workers' Clssification of Work
>
> A. Mechanics
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> Electricians' work shall consist of assembling, installing, removing, maintaining, repairing, rebuilding, inspecting and testing of all current carrying, magnetic and insulated parts of generators, electrical switches ...; power and load testing of electrical equipment.
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> Electrical work on refrigeration equipment, elevators, moving stairways, electric speedometers, tachometers, work on axle generator and axle lighting equipment, train control, electric brakes, air conditioning equipment, roadway equipment."

According to the Organization, the removal of air conditioning units is clearly covered under the Classification of Work Rule. Thus, the Organization asserts that it is not incumbent upon it to prove that this work was traditionally performed by Electricians. Since the rule is specific as to this type of work, it insists that the custom or practice on the property is irrelevant. Thus, in the Organization's view, the work specifically belongs to members of the unit by the very language of the Agreement.

In addition, the Organization contends that its claim was untimely denied by Carrier on two separate occasions, in violation of Rule 24(b) of the Agreement.

That rule provides:

> "If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be made within 60 calendar days from receipt of notice of disallowance. Failing to comply with this provision, the claim or grievance shall be considered closed. If the officer to whom the appeal is made fails to render a decision in writing within 60 calendar days of date of appeal, the claim or grievance shall be allowed as presented."

According to the Organization, the claim was filed on March 19, 1979 and denied on May 21, 1979, more than sixty days after it was filed. In addition, the Organization appealed Carrier's Facility Manager's decision on May 31, 1979. That appeal was denied by W. W. Sales, Jr., Regional Manager of Labor Relations, on August 22, 1979, again more than sixty days after the appeal was filed.

Thus, in the Organization's view, Carrier has twice violated the sixty day requirement of Rule 24(b). Accordingly, the claim should be sustained on procedural as well as substantive grounds.

Carrier, on the other hand, denies that any procedural or substantive violation of the Agreement exists. As to timeliness, it asserts that it acted in conformity with the Agreement as well as in the spirit of harmonious labor relations' policy. It notes that it did not receive Claimant's time claim (dated March 19, 1979) until April 19, 1979. Thus, its answer on May 21, 1979 was well within the sixty day limit of Rule 24(b).

As to the alleged late response of W. W. Sales, Jr., Carrier asserts that it and the Organization agreed to docket the claim for conference to be held on June 19, 1979. When the Organization indicated it was not prepared to consider the claim on that date, W. W. Sales informed the Organization that he would be willing to discuss the claims upon his return to the Albany/Rensselaer facility in July or August of 1979. As soon as he realized that he would not be returning to the area in July or August, he wrote to the Organization suggesting an additional extension of time limits so that the parties could meet to discuss the claim. Upon receipt of the Organization's letter of August 8, 1979 alleging that Carrier had not timely responded to its May 31, 1979 appeal, Carrier promptly answered on August 14, 1979 wherein it denied the Organization's claim.

Thus, in Carrier's view, it attempted to schedule a conference on the claim well within the sixty day time limit. When the Organization was not prepared to go forward, Carrier suggested alternate dates. Accordingly, Carrier argues that the Organization should, in effect, be barred from asserting that Carrier's August 14, 1979 response was untimely, since Carrier relied upon the Organization's word and good faith in assuming that a conference would be held before a decision on the Organization's earlier appeal was made.

As to the merits of the claim, Carrier asserts that there is no specific rule which reserves to Electricians the right to remove air conditioning equipment. Since no such rule exists, the Organization must prove that this

work has been traditionally performed by Electricians. This the Organization has not proven. According to Carrier, while Electricians have traditionally performed electrical work on air conditioning units, removal of these units has traditionally been performed by Carmen.

For these reasons, Carrier asks that the claim be denied in its entirety.

As to the issue of timeliness, we find that Carrier acted properly and in accordance with Rule 24(b). Carrier's original denial must be made within sixty days that the claim was filed pursuant to Rule 24(a) and not sixty days from date of appeal, as required by 24(b). The Organization's claim is dated March 19, 1979; Carrier's receipt stamp shows that it was received by "Amtrak's Sup't Office" on April 19, 1979. The Organization has not shown that the receipt date was improperly recorded and neither side has offered an explanation for the apparent one month delay from the date the claim was originated to the date it was received by Carrier. Nonetheless, the term "60 days from the date same is filed" indicates that a "filing" with Carrier must have taken place. Since Carrier received the claim on April 21, 1979, the claim could not have been filed before that date, though it was originated a month prior. Thus, the claim was answered within sixty days of its filing.

In addition, W. W. Sales' denial on August 14, 1979 of the Organization's appeal dated May 31, 1979 was also timely and in conformance with Rule 24(b). The record evidence reveals that Sales delayed his written response because the Organization requested a conference on the claim. That the conference was not a scheduled grievance meeting (see Organization's letter of August 8, 1979) is irrelevant. Carrier relied upon Organization's desire to discuss this and other claims. Thus, the Organization is now estopped from claiming that Carrier's denial of its appeal was untimely when it caused the delay at issue.

As to the merits of the claim, we conclude that the Organization misinterprets the Classification of Work Rule which it cites in support of its contention. That rule does not state nor imply that Electricians' work consists of "removing air conditioning equipment". Rather, the Rule provides that Electricians' work consists of removing generators, switches, etc. It also provides that Electricians' work consists of Electrical Work on air conditioning equipment. The issue here is the removal (not electrical work) of the air conditioning (HVAC) unit on PC 154. Carrier does not deny that electrical work on PC 154 belongs to Electricians. Such work would clearly be theirs. Rather, it argues that removal of such units have traditionally been performed by Carmen.

Since the Classification of Work Rule does not specifically cover the circumstances of this case, the burden falls to the Organization to prove that this work has been customarily performed by members of the Electricians' craft. There is no record evidence to this effect. Accordingly, the claim must be denied on its merits as well as on the procedural grounds presented.

Award No. 9336-T
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A W A R D

Claim denied.

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 5th day of January, 1983.