

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

We, the I.B.E.W. Committee of Local Union No. 784 are submitting a claim in accord with Rule No. 4-P-1 (A) of the Agreement between the Consolidated Rail Corporation and the Communications Department employees represented by the I.B.E.W. as follows:

That at Winchester, Indiana on the Conrail property the controlling agreement was violated when C&S Supervisor assigned the Brotherhood of Railway Signalmen (BRS) to make repairs to Communications wires near M.P. 207 (site of derailment) and replace (stolen) Communications wires at M.P. 215, 219 and 221 on January 5 and 6, 1981.

That the I.B.E.W. Communications Department gang linemen J. T. Marsee, D. Gross, J. R. Paddick, and E. D. Hammond be compensated for twenty (20) hours each at the overtime rate by reason the BRS Signalmen were assigned to perform I.B.E.W. Communications work in violation of the Agreement, rules II-A, 5-F-1 (B), and Appendix C - paragraph eight (8).

On Monday, January 5, 1981 and Tuesday, January 6, 1981 there were twelve (12) BRS Signalmen assigned to make repairs to the communication wires and pole line at the above described locations. These BRS signalmen worked eight (8) hours straight time plus two (2) hours overtime on each of the two days, this being a total of ten (10) hours on each day (Mon.-Tues.).

In assigning the BRS signalmen to make repairs to the pole line when I.B.E.W. Communications ling (sic) gangmen were available, we feel the Communications Department men were deprived of compensations which they were contractually entitled to receive.

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 employes 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 date of Monday, January 5, 1981 a derailment occurred at Mile Post 207 near Winchester, Indiana which knocked down three telephone poles, these poles held both communications and signal wires. Both telephone and signal service was disrupted. At about the same time vandalism and theft occurred at other points on the property of the Carrier wherein telephone wires were cut down and stolen. On the same date the Carrier sent one communications crew foreman and one ground man to the scene to repair the damages. Because of shortage of help the foreman asked for additional communications line men (he had none).

Instead of sending communications linemen to complete these repairs the Carrier sent a number of signalmen (the Employees say 12, the Carrier says 5). Apparently no repairs were made on January 5 and at the end of the day all signalmen returned to their homes which were 50 to 100 miles away. On January 6, all returned and the damage was repaired. This consisted of setting three poles, attaching cross arms and replacing the wires both communications and signal. According to Carrier the signalmen worked eleven hours, three at overtime and the communications employees worked fourteen, four at overtime. The Employees contend that using signalmen to make these repairs instead of communications men was a violation of the following Rules:

May 1, 1979 Agreement - Article II - A (Paragraph 6)

"Electric wiring; installing, maintaining and repairing conduits and condulets; building, repairing and maintaining pole lines and supports for service wires and cables; traveling gantry; jib and monrail cranes, conductor and feed wires; cable spicing, work on storage batteries; inside and outside wiring at shops, yards, buildings and structures. Time setting and time studying in connection with work of the Electrical Worker Craft."

May 1, 1979 Agreement - Rule 5 - F - 1(b)

"None but mechanics or apprentices regularly employed as such shall do mechanics' work of each craft except foreman at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed twenty (20) hours a week for one shift, forty (40) hours a week for two shifts, or sixty (60) hours for all shifts."

May 1, 1979 - Agreement - Appendix C - Paragraph 8

"Pending Resolution of the cross representation problem, this Agreement shall apply to Communications Department employees represented by the International Brotherhood of Electrical Workers except their rates of pay, basis of pay and seniority and other special rules shall remain unchanged."

Though these rules are essentially the same as rules 114, 115, 29 and other special rules of the Communications Department Electricians of the System Federation No. 54 Agreement, they are incorporated in this submission to demonstrate that though the Agreement of May 1, 1979 is relatively new; the rules are not.

System Federation No. 54 - Rule 115

"Linemen's work shall consist of the building, repairing and maintaining of pole lines and supports for service wires and cables..."

The Carrier contends that:

1. No electricians were deprived of work.
2. The work performed by signalmen was work required of them by agreement or past practice or was done to correct an emergency situation.
3. The work of hanging cross arms is work which has not exclusively belonged to either signalmen or electricians by either agreement or past practice.
4. The work was performed as a result of an emergency.
5. The Claimants were on duty and under pay approximately 200 miles away and accordingly not available.
6. While not conceding any violation of rules, if there was any violation it would at most constitute a de minimis violation.
7. The agreement makes no provision for penalty payments.

Both parties cite various awards in support of their positions.

The Brotherhood of Railroad Signalmen although advised of this dispute chose not to enter anything into it.

We have carefully considered all aspects of this case and note that neither party has shown nor cited a single rule, agreement or instance of past practice wherein signalmen had set poles or hung cross arms, we must therefore consider this only as an unproven assertion.

As to the Claimants being on duty and under pay and 200 miles away, we must assume that the signalmen were also on duty and under pay and we note that these signalmen, or at least some of them, were brought from 100 miles away, returned to their homes, and then brought back to the job site again the next day, thus actually traveling 300 miles before performing any work at all to repair the damage. It appears there was plenty of time to bring the Claimants to the job site.

The Electricians' Rules read in part:

"...building, repairing and maintaining pole lines and supports for service wires..."

"(a) Lineman's work shall consist of the building, repairing, and maintaining of pole lines and supports for service wires and cables etc...."

We further note that the following exception is provided:

"None but mechanics or apprentices regularly employed as such shall do mechanics work of each craft except foreman at points where no mechanics are employed."

In Second Division Award No. 3972, Referee Howard Johnson stated in pertinent part:

"When a provision is adopted with a specific exception, the only rational conclusion is that no other exceptions are intended. That conclusion is the basis for the well established rules of contract and statutory construction that 'the specification of one thing is an exclusion of the rest', and that 'an exception affirms the rule in cases not excepted.'"

In Second Division Award No. 6806, Referee Dana E. Eischen, it was stated:

"...Under well established substantial rules of contract interpretation, it is said that where the parties specifically mention items meant to be covered, all things not mentioned were intended to be excluded 'Expressio unius est exclusio alterius'. See Third Division Awards 4439, 8172, 11165, 13719 et al."

Using signal department employees to perform work covered by the electricians' agreement is not among the exceptions provided for in the Rules, nor is emergency situations, and we also have doubts as to just how serious the emergency was when no repair work was performed until the second day. We find that the agreement was violated and the Claimants were deprived of work when other than Communications Department employees performed this communications work, and it is far too large a period of time to be considered a de minimis violation. There remains the remedy. The Carrier has stated that these signalmen worked 11 hours on January 6. The Employees have made claim for 20 hours for each Claimant at overtime rate, the amount claimed is clearly excessive and further this Board has almost consistently ruled that pay for time not worked should be at the straight time rate. We believe a proper division of the work would be 8 hours for each Claimant and at the straight time rate and will so rule.

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Award No. 10143
Docket No. 10041--T
2-CR-EW-'84

A W A R D

Claim sustained for eight hours compensation for each Claimant at the straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1984.