Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10387
SECOND DIVISION Docket No. 10180-T
2-CMSP&P-EW-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement on March 6, 1982, when Machinists T. Dwyer and M. Gregovich were improperly assigned to perform electrical work, which should have properly been assigned to Electrician Howard Eckford.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Mr. Howard Eckford for eight hours' 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 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 were given due notice of hearing thereon.

Claimant, Electrician Howard Eckford, is employed by Carrier, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, at the Milwaukee Shops in Milwaukee, Wisconsin.

On March 6, 1982, two members of the Machinists' Craft were assigned to reapply a traction motor and wheel assembly to a locomotive at the Carrier's Milwaukee Diesel Shop. On April 29, 1982, a time claim for eight hours of pay was submitted on behalf of the Claimant, contending that the Machinists were improperly assigned to perform his work, which was alleged to be Electricians' work.

The Organization contends that the Carrier violated Rule 71 of the current Agreement when it assigned two Machinists to rewire the traction motor; the work should have been assigned to the Claimant, who was next in line and available for call. Rule 71 states:

"Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all generators, switchboards, meters, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon locally), axle lighting equipment, all inside telegraph and telephone equipment, electric clocks and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards, and on structures and all conduit work in connection therewith (except outside wiring provided for in Rule 72), steam and electric locomotives, passenger train and motor cars, electric tractors and trucks; include cable splicers, high tension power house and substation operators, high tension linemen, and all other work properly recognized as electricians' work."

The Organization maintains that Rule 71 provides that wiring work on motors and locomotives should be assigned exclusively to Electricians; the Machinists' Classification of Work Rule does not refer to this or any similar kind of work.

The Organization further argues that when the Carrier denied the original claim, it cited a non-existent provision of the Agreement. Because the Carrier failed to cite a proper provision in denying the claim, the Organization contends that the claim should be sustained.

The Organization contends that the Milwaukee Diesel House has never been classified as a running repair work location; even a proper reference to the Incidental Work Rule by the Carrier would therefore not apply to this claim.

The Carrier contends that the major work assignment at issue in this claim, the reinstallation of a traction/motor wheel assembly, involved the performance of incidental work, coupling four traction motor leads, as defined by the Incidental Work Rule. The Incidental Work Rule provides:

"Public Law No. 91-226:

Attachment No. 1

At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it

"does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connection of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.

If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

The Carrier argues that the Organization never requested a time study of the disputed work. Moreover, the Carrier maintains that the Milwaukee Diesel House is a "running repair work location", as described in the Carrier's Tour Guide Book.

The Carrier contended at the Referee Hearing that the amount of work involved was a twenty-minute coupling of four cables--one-half hour at the maximum.

Moreover, at the Referee Hearing, the Carrier admits that it cited the wrong Agreement as its support for its position but that the Organization knew all along that the issue involved was the "Incidental Work Rule". Finally, both Carrier and Third Party point out that the Organization never requested a timing of the job because it would have shown how simple and short and "incidental" a task was performed on the day in question. The Organization responds by saying that there is no need for a time study when the Incidental Work Rule does not apply.

This Board has reviewed all of the evidence in this case and finds that the Carrier did, in its original denial letter, cite an improper authority, i.e., "Public Law Board No. 91-226 of April 9, 1970, Article III", to support its argument that the work performed that is in question was "incidental work at a running repair work location". However, in that same May 26, 1982, letter of E. A. Rogers, Diesel House Manager, Rogers used the term "incidental work" in three separate places. Consequently, it should have been clear to the Organization that the reference to Public Law Board No. 91-226 was an error and that the Carrier was asserting the Incidental Work Rule as its support.

Moreover, in his response to Rogers' letter, D. Halkyn, General Chairman, states that he does not agree with Rogers' opinion that the work was incidental and further that Public Law Board No. 91-226 does not contain any "articles". Consequently, as early as June 30, 1982, in spite of the fact that the Carrier was continuously citing the wrong authority for its position of incidental work, the Organization was aware of the incidental work argument and defended against that argument throughout the entire grievance procedure.

The purpose of requiring the Carrier to cite authority for its denial of a claim is to facilitate a rational and systematic approach to the resolution of grievances and to discourage guesswork on the part of the other party. Just as one requires the Organization to support a claim with contractual or legal authority, the same requirement is on the Carrier when it is taking its positions. However, in this case, the error in the Carrier's early statement of authority was so obvious that the Organization was aware of it and responded throughout the grievance procedure to the Carrier's "incidental work" position. Hence, the Organization was not prejudiced by the misstatement of authority, and this Board will not sustain the claim on the procedural grounds.

Turning now to the merits of this case, this Board finds that the Diesel House was a running repair location. Although the work in question was not repair work, it was the connection of leads incidental to installation. The work in question did not comprise a preponderant part of the total amount of work involved in the assignment.

On the day in question, the main work assignment to the Machinists was the reinstallation of the traction motor/wheel assembly to the locomotive--work that was Machinists' work. Certainly, the recoupling and taping together of traction motor leads was "incidental work" covered by the Rule implemented in 1970.

It is clear that the Incidental Work Rule must be viewed as superseding the classification of work provision of the Agreement. (See Awards 6440 and 8316.) Each assertion of the Incidental Work Rule must include an analysis as to whether or not the work included the following:

1. Was performed at a running repair location;

2. Was capable of being performed by the employee who actually performed the work at the Carrier's discretion;

3. Was not a preponderant part of the total work; i.e., must consume less time than the main work assignment;

4. Be ancilliary to performing the main work, i.e., involving the mere connection or disconnection of appurtenances; and

5. Not involve the overhauling, repairing, modifying or improvement of equipment.

In several previous decisions, this Board has ruled that the disconnection of electrical leads can be classified as incidental work provided the work is performed as part of a running repair at a running repair location. (See Awards 7610; 8316; and 9271.)

In this case, it has been clear that the disputed work was a minor task incidental to the main assignment to the Machinists. Therefore, there was no violation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of May 1985.