

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) improperly assigned Signalmen to pull up communications cable from the ground and take down communication cable from steel supports, including messenger, at Dartmouth Street, Backbay, MA, on June 25, 1981 (sic).

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to compensate Gang Linemen R. Zmayefski (Leader), R. Selva, R. Winward and K. Rock and additional eight (8) hours each at the applicable Gang Linemen rate in order to make them whole.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 essentials of this dispute surround work assigned to Employees of the Signalmen Craft that the moving Organization contends belongs to its Electrical Craft.

At the outset, the Carrier argues on procedural grounds, principally that on the property, the Organization failed to assert a specific rule violation in its claim. While the Carrier's contentions in this respect are not without merit, the evidence shows that the Carrier accepted the claim and knew that it asserted a violation of the Scope Rule. In this regard, we particularly note the Carrier's letter of October 20, 1981, to the Local Chairman. Accordingly, we conclude that the matter is properly before us on the merits.

Turning to the merits, the Organization has introduced certain material not earlier introduced into the record developed on the property. Under well-established principles of the Division, these are not admissible at this time and will not be considered by the Board.

With respect to the incident leading to this dispute, the Organization's initial claim, dated June 23, 1981, cited the work order number and described the work under dispute as consisting of the following: "to pull up from the ground and take down from the steel supports approximately 500 feet of 100 pair communication cable and messenger". The Carrier's response, over the signature of the Division Engineer, dated July 17, 1981, and the subsequent correspondence from the Carrier did not in any substantive manner respond to the Organization's original contentions. While the Carrier is certainly correct that the Organization, as the moving body, bears the burden to make its case, a significant degree of this burden shifted to the Carrier to respond in a substantive manner.

In summary, while the admissible evidence before this Board does not provide the most desirable degree of substance, on balance of the record before us, we find for the Organization.

With respect to the remedy, we agree with the Carrier that the Board, under the circumstances herein, lacks authority to assess a penalty. However, if there is a difference between the amount of wages actually earned by the Claimants and the amount that they would have earned had they been assigned to perform the disputed work, those wages shall be a part of this award.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1985.