

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (Amtrak))

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) violated the controlling agreement effective September 1, 1975, in particular, Rule 13(f) and Rule 1 when Carrier required and permitted Seaboard Coast Line Machinist Barnwell and Pipefitter Woods to perform work on October 14, 1982. That Amtrak work belonging to Amtrak Electricians by swapping lead motors on train #81, thereby denying Electrician E. T. Scott this work who was first out on the overtime roster at the Amtrak Passenger Station, Jacksonville, Florida.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to compensate Electrician E. T. Scott for four (4) hours at the pro rata rate account of Carrier's violation on October 14, 1982.

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 were given due notice of hearing thereon.

The Claimant is employed as an Electrician at the Carrier's facility located at Jacksonville, Florida.

The events which led to the filing of the instant Claim occurred on October 14, 1982 when the Carrier called upon Seaboard Coast Line Machinist Barnwell and Pipefitter Woods to perform the duties involved in exchanging lead motors on Train #81. In permitting non-Carrier employees to perform such work which the Organization contends is Electricians' work under the Controlling Agreement, the Carrier deprived the Claimant of the opportunity to work overtime.

The Carrier indicates that Train No. 81 "unexpectedly became disabled on October 14, 1982 requiring that its lead motor be removed." It goes on to assert that "[s]ince there was no Electrician assigned to the night shift at Jacksonville, it was necessary to call the Seaboard Coast Line Railroad and have its employees perform the work" in question. Furthermore, the Carrier claims that these employees in the past have performed the work of exchanging motors on an emergency basis when no one is on duty at the Jacksonville facility.

After carefully examining the record, we have concluded that the Claim must be sustained. Rule 1 of the Agreement provides, in relevant part, that:

"*** employees will ordinarily perform the work which has been performed traditionally at that location ***."

In Appendix F of the Agreement the parties elaborated on the word "ordinarily" continued in Rule 1 by stating that it:

"is designed to preclude Scope/Classification Rule based claims and/or grievances which arise as a result of either the assignment of Electrician craft ***, or the erroneous assignment of other crafts to perform work customarily performed by Electrician craft employees at that location."

The record warrants the conclusion that Electricians have ordinarily performed the work in question. Furthermore, the Carrier has erroneously assigned the work to employees of another carrier on October 14, 1982. In his letter dated January 3, 1983 to Local Chairman J. T. Pope, C. A. Cannady, General Maintenance Foreman stated that "this is the first time we have had an emergency situation that required the locomotive to be reversed at Jax in order to route the defective one to Hia. Fla. for repair since the Electrician position on that shift was abolished." Implicit in Cannady's statement is that had the Electrician position on the shift not been abolished, the work on October 14, 1982 would have been performed by an Electrician.

The next query to be addressed is whether, as the Carrier contends, an emergency existed on October 14; and if so, whether the Carrier's decision to call upon Seaboard Coast Line employees to perform the work in dispute constitutes a violation of the Agreement. The Board cannot conclude that an emergency existed on October 14, 1982. The mere assertion by the Carrier of an emergency" or "emergency condition" without proof to support the assertion does not constitute probative evidence of an emergency. The Carrier does no more than take refuge in the assertion that an "emergency" occurred on October 14, 1982 to call upon Seaboard Coast Line employees to perform the work. Since there was no effort to substantiate its Claim, we cannot conclude that an

emergency existed. Accordingly, there is no need to determine whether the Carrier was authorized under the Agreement to call upon the Seaboard Coast Line employees to perform the work in question. Moreover, since there was no emergency on October 14, there is also no need to determine whether a practice existed to have employees not employed by the Carrier perform the work of exchanging motors in the absence of an Electrician on the shift.

There is no question but that the Carrier has the unilateral prerogative to determine if and when overtime is to be performed. However, by violating Rule 1 of the Agreement on October 14, the Carrier deprived the Claimant of a work opportunity. As stated in Third Division Award No. 19495:

"*** in light of prior awards we conclude that Claimants must be compensated for their loss of additional work opportunities."


The failure to impose monetary damages in this case would mean that the Carrier could remove work from the scope of Agreement with impunity. To insure compliance with the Agreement, the Board awards to the Claimant the minimum reporting time allowance of four hours at the straight time rate, as provided in Rule 13(c) of the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.