

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

Parties to Dispute: ((International Brotherhood of Electrical Workers
(Seaboard System Railroad Company (SCL)

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company (SCL) violated the current working agreement, particularly Rule 2 (a) NOTE: and 29 (b) when Carrier required and permitted Assistant Communications Maintainer R. Edwards to perform Communications Maintainers' work on August 27 and 28, 1981.

2. That accordingly, the Seaboard System Railroad Company (SCL) compensate Communications Maintainer N. S. Howell sixteen (16) hours at the overtime 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 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.

This dispute arises over the use of Assistant Communications Maintainer R. Edwards on August 27 and 28, 1981. The Organization claims that on the above dates Employee Edwards was required and permitted to perform Communications Maintainer's work on his own. According to the Organization, the Claimant, N. S. Howell, should have been called for the work instead of allowing an Assistant to install a Digital Dial Plant. Relying on Rule 2 of the Controlling Agreement, the Organization argues the Carrier violated the Rule when it permitted an Assistant to work two days on his own without working with a Journeyman. The pertinent language of Rule 2 is set forth below:

"(a) An employe in training for a position of Communications Maintainer, working with and under the direction of a Communications Maintainer, shall be classified as an Assistant Communications Maintainer. He shall have common headquarters with the Communications Maintainer under whom working.

Note: Insertion of the word 'with' in this paragraph is not intended to restrict assistants from performing work under the direction of a Communications Maintainer. It is not intended that the word 'with' mean that assistants must work within any specified zone or distance in performing the work under the direction of a Communications Maintainer. Likewise, it is not intended that assistants be sent out alone and on their own responsibility to perform bona fide Communications Maintainers' Work."

The Organization further contends the Carrier is fully aware there is no provision in the Agreement requiring or permitting an Assistant to work on his own and perform Journeyman work. On the contrary, the Organization asserts Rule 29 further highlights the impropriety of the Carrier's actions. Rule 29 reads:

"(a) None but Communications Maintainers or their assistants regularly employed as such shall do Communications Maintainers' work as per Rule 1.

(b) Assistants when used in any way in connection with journeymen's work shall in all cases work under the orders of the journeyman, both under the direction of the supervisor."

The Carrier too relies upon Rules 2 and 29. It argues there is nothing unique about an Assistant performing work without the immediate presence of a Journeyman. The Carrier contends Assistants are given work for which they are competent to perform when Maintainers are not available to augment their training. According to the Carrier, any other approach would leave it with no choice but to either send the Assistant home or pay him to do nothing. Citing an "identical" situation involving a similar rule on the Louisville and Nashville Railroad, the Carrier notes that Award 74 of Public Law Board 352 stated:

"The question at issue is whether it was proper under the Agreement to permit Claimant, as assistance communications maintainer, to work alone with Division forces, assisting them in pulling cable, setting poles and maintaining pole lines, while the Chief Communication Maintainer or Installer with whom he is assigned to work and train was not present.

There is no question but that an assistant communication maintainer is a separate and distinct job classification (see our Award No. 3) and that under Rule 2(g), Carrier must assign him to work under the directions of the chief communications maintainer or installer. Rule 2(g) does not require, however, that the chief maintainer or installer always physically accompany the assistant wherever he works on the system. There are many sound ways of exercising supervision and one of the most effective and mature methods is to permit the trainee, after a reasonable period, to try his own wings. There is no evidence that a different situation existed in this case or that the work was of such a nature that a learner should not have been permitted to attempt it without the Chief being in close attendance."

Herein, the record establishes the Carrier's Chief Communications and Signals Officer, R. D. Liggett, responding to the Organization's appeal, outlined the following facts. He stated the project was started on August 18, 1981, and that it was to be performed on the territory of Communication Maintainer Sam Justice, who was on the job August 18, 19, 20, 24 and 25. Although it was not their territory, Liggett indicated Communication Maintainers Hewlett and Howell were exposed and knowledgeable of the work involved. Liggett outlined the work on August 27 consisted of mechanical type work, fastening a cable distribution frame in place. The work on August 28 was described as "fanning out" connecting telephone cables to the Key Service Unit Distribution Board.

Apparently, the Organization believes that the fact that Assistant Maintainer Edwards performed the above outlined work alone means the Carrier did not meet the provisions of the cited Rules and, in fact, was sent out alone on his own responsibility to perform Communication Maintainer's work.

Our view of the record does not support such a conclusion. The Organization has not proven by a preponderance of the evidence that Assistant Maintainer Edwards was in effect working without supervision, without guidance, and without orders from Journeyman Justice. The probative evidence convinces this Board that the project in question was ongoing and that the duties performed by Assistant Communication Maintainer Edwards were in accordance with instructions received from Communication Maintainer Justice.

We find that Rules 2 and 29 cannot be read so as to require a Communications Maintainer must physically be present whenever and wherever an Assistant works. Herein, the burden of proof rests with the Organization to show that the Assistant was sent out alone and worked on his own responsibility. We find the record does not support such a conclusion. The work involved was simply a continuation of the project the Assistant had been working upon under the direction of Communication Maintainer Justice.

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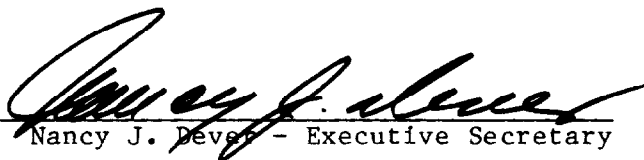
Award No. 11174
Docket No. 10816
2-SSR-EW-'87

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 25th day of February 1987.