

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
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the Duluth, Missabe and Iron Range Railway Company (DM&IR) violated rule 74 of the current Shopcraft Agreement and past practices by assigning track department employees to provide flagging of train movement on tracks where signal construction was being performed and assigning the track department employees to operate the on-track vehicles used for transporting signal construction electricians and equipment to the construction site.

2. Accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to pay electrician Steve Blettner one hundred forty-four (144) hours' pay at the straight time rate for electricians.

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.

As third party in interest, the Brotherhood of Maintenance of Way Employes was advised of the pendency of this case, but chose not to file a submission with the Division.

This Claim arose after an employee, not belonging to the Electrical Craft, operated a Hy-Rail vehicle and provided flag protection for an Electrical Crew. The Claimant asserts, relying on Rule 74 of the Parties' Agreement, that the work at issue belonged to the Electricians.

The Carrier does not dispute the Claimant's version of the events; however, it essentially asserts that the Claim does not have Rule support and that the work of transporting personnel and flagging is not exclusive to any craft.

In this case, the Organization relies on a portion of Rule 74 which states ". . . and all other work generally recognized as electricians' work." Clearly then, it must show a past practice which has established that the work at issue accrued to its craft. Here, it mainly rests its claim upon statements signed by a number of electricians which, for the most part, state that only Electricians operated Hy-Rail equipment and motor cars in connection with signal and electrical construction, and that these activities never have been performed by employees of another craft.

The Carrier, in its Submission and its forceful arguments before the Board, advances a number of sound arguments. Among others, it has noted that the burden is upon the Organization to show a systemwide past practice for this claim to prevail. However, the Board observes that this argument was not brought forward on the property. Accordingly, the Board will not consider this first-time contention.

Turning now to those matters properly before us, the evidence shows that, on the property, the basic past practice contention asserted by the Organization was not addressed by the Carrier in any manner. Therefore, the Organization's version of the essence of its Claim is uncontroverted and unrebutted on the property, although the Carrier had both the time and the opportunity for rebuttal. It therefore stands as presented.

In view of all the foregoing, Part I of the Claim is sustained. With respect to Part 2, we follow the general holding that where Claimants are fully employed and no loss of earnings had been demonstrated, no monetary damages will be awarded.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of September 1987.