

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11928  
Docket No. 11615-T  
90-2-88-2-98

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rules 32 and 122, when Machinist Dave Brandt was arbitrarily assigned to perform electricians' work, of testing and inspecting coded cab signal equipment on locomotive 2423 on April 19, 1987 at the Albina, Oregon Terminal.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician K. A. Rollins in the amount of four hours (4') pay at electricians' rate for April 19, 1987, as he was available to perform this work had he been assigned.

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.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute, but chose not to file a response with the Division.

A Claim for four (4) hours' pay was filed by the Organization at Hermiston, Oregon, on May 6, 1987, on grounds that the Carrier was in violation of Agreement Rules 32 and 122 when it permitted a Machinist to "test and inspect coded cab signal equipment on locomotive 2423" at the Albina Oregon Terminal. According to the Claim, this is work exclusively reserved for the electricians' craft.

The Rules in question read, in pertinent part, as follows:

Rule 32

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per the special rules of each craft...."

Rule 122

"Electricians' work shall include...inspecting ...steam and electric locomotives...automatic cab signal equipment and all other work properly recognized as electricians' work...."

In denying the Claim, the Carrier states, first of all, that the work did not consist in inspecting any equipment, but only in "testing" cab signal equipment, and the latter is not protected by the language of Rule 122. Secondly, the Carrier observed that as a matter of past practice work of the type had been "shared amongst the crafts for some time" and that the electricians had no exclusive purview thereover.

The disputed work involves the following set of procedures according to information of record provided by the Carrier:

- "1. Set hand brake.
  2. Reversor handle must be placed in the forward position.
  3. GE units only - Generator field switch must be in the ON position.
  4. Observe that the green (180 Code) indication is obtained.
  5. Observe next signal change to yellow over green (120 Code) and operate acknowledge switch to silence audible indicator and forestall penalty brake application.
  6. Observe signal change to yellow (75 Code) and operate acknowledge switch to silence audible indicator and forestall penalty brake application.
  7. Observe signal change to red over yellow (No Code) and operator acknowledge handle to silence audible indicator and forestall penalty brake application.
  8. Observe signal change to green indication and place reversor handle in neutral.
- Measure the elapsed time from when the signal indication changes to red over yellow until a penalty full-service brake application is initiated. Initiation of the penalty application occurs at drop-out of CCS-SC magnet valve.
- This time interval must not exceed eight (8) seconds.

9. After penalty application occurs, observe rate of brake pipe reduction. Move automatic brake handle rapidly to the emergency position and observe that the brake pipe reduction rate increases.
10. Determine that main switch and cut-out cock is sealed.
11. Record seal numbers on Form 2415.
12. Place one (1) copy of Form 2415 (white card) in provided locomotive receptacle.
13. Place one (1) copy of Form 2415 (white card) on file.
14. Remove and discard all outdated Form 2415."

These procedures are applied to the lead locomotive of a consist prior to departure of a train. The Carrier refers to this procedure as a coded cab signal departure test. The Organization does not deny that the lead locomotive of a consist is tested according to the procedures outlined above, but argues that the test must be put in the context of the overall inspection function which electricians do to equipment and that it involves more than the Carrier states. This Board is in no position, nor is it its function under Section 3 of the Railway Labor Act, to resolve such irreconcilable differences of fact as are present in this case with respect to what the disputed work at bar consists (Third Division Awards 26200, 26428, 26679). Rather than dismiss the Claim on those grounds, however, for which action on the Board's part there is arbitral precedent, it is the Board's view that it would be more appropriate to issue a sustaining or denial decision in the instant case. It holds this position because this is but one of many claims before this Carrier by this Organization dealing with the procedures related to the lead locomotive of a consist before it departs, and also because the Board has already ruled on a case dealing with a parallel claim by the Organization, filed with this Carrier (Second Division Award 11615). Since the Board is in no position to second guess the Carrier on assignment of work, therefore, it must accept that the procedures in question are what the Carrier states they are.

The language of the Rule in question does not directly address the issue of tests, but only of inspecting. The Organization argues that the latter language subsumes the former. The Organization has no alternative but to argue such in view of the nature of the Claim. This Board, however, is charged with the interpretation of labor agreements "as written," and in so doing it must follow the basic "and ordinary rules of contract interpretation and construction" (Third Division Awards 21459, 21697, 23135; Fourth Division Award 4645; Public Law Board 4731, Award 1). The Board may not add to nor subtract from the Agreement, and application of the ordinary rules of contract construction warrants the conclusion that if the parties want to use the language related directly to testing they would have done so in framing their intent. It is obvious that they did not. At the most the Board must conclude as Second Division Award 11615 has, about Rule 122 of the Agreement, that this Rule "is ambiguous and does not clearly provide the electricians' craft (exclusive jurisdiction) to test this equipment."

Since there are not clear and unambiguous protections for this work for this craft under the language of the pertinent Rule, the Board need not specifically address the issue of whether the practice of doing the tests had been a mixed one or not, although earlier Award 11615 issued by the Board does address this question. That Award concludes that the practice was a mixed one and on res judicata grounds the Board is in no position to dispute such determination. The record in this case does show that the amount of time needed to perform the test is very short, in the neighborhood of 15 minutes, and that the level of sophistication needed to do the test is considerably below that normally exercised by members of this craft. Assuming, arguendo, that the work would fall under the protections of Rule 122, which the Board is not prepared to do, the Board would also not find it unreasonable to conclude that the amount of work at bar falls under arbitral precedent articulating de minimus doctrine (Second Division Awards 7587, 8360, 10875; Fourth Division Awards 406, 806, 1486, 2122, 3168).

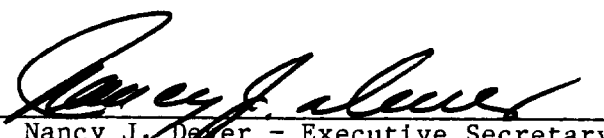
The Board does note that the Carrier's Submission contains materials not exchanged by the parties on the property. Such is inappropriately before the Board (Second Division Award 11633; Third Division Awards 23883, 27328) and the Board has not used it in its determination of this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1990.