

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 Foreman Kirby Edmunds arbitrarily performed electricians' work of testing and inspecting coded cab signal equipment on Locomotive 3680 and Albain (sic) Oregon Terminal on May 3, 1987.

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 the electricians' rate for May 3, 1987 as he was available to perform this electricians' work had he been called.

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 American Railway and Airway Supervisors Association was advised of the pendency of this dispute but chose not to file a response.

A Claim for four (4) hours' pay was filed on May 6, 1987, by the Organization at Hermiston, Oregon on grounds that the Carrier was in violation of Agreement Rules 32 and 122 when it permitted a Foreman to "test and inspect coded cab signal equipment on locomotive 3680 at the Albina Oregon Terminal" on May 3, 1987. According to this Claim, which is a companion Claim to Second Division Award 11928, this work is exclusively reserved for the electricians' craft. The Rules in question here are the same applicable to the other case ruled on by this Board. These Rules state, in pertinent part, the following:

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 the earlier Claim before this Board, allegation was that the work of electricians was done by a machinist; in this case the allegation is that the work was done by a foreman.

In denying the Claim, the Carrier holds the position that testing the "...CCS equipment is not work identified under Rule 122" per se as accruing only to electricians, and secondly, the work in question "has been shared amongst crafts for some time" as a matter of past practice.

A review of the record shows that in this case, as in earlier Award 11928 studied and ruled on by the Board, the parties differ on the perimeters of the work here under dispute. The Carrier holds that the "Departure test in itself is a relatively simple task requiring less than fifteen (15) minutes to perform..." which includes the following procedures:

- "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 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."

According to the Carrier the work involved requires neither the knowledge nor "expertise of a journeyman electrician."

Again, in this case the Organization argues that the "test" is more than a test and is akin to an inspection as this is stated on the CCS card. Here, as in Award 11928 the Board is in no position to resolve discrepancies of fact with respect to what work is actually in dispute and the rationale presented in Award 11928, supported by arbitral precedent, is incorporated herein by reference. The Board does note, as a matter of emphasis which it might underline here more than it did in its earlier Award 11928, that the Organization is not always consistent in its arguments about whether the work should be called a test and/or a test as part of an inspection and/or an inspection. In correspondence dated December 4, 1987, the Organization refers to the work as a "test." Therein it states, to the Carrier:

"Although you contend in your letter...that several crafts have performed this inspection test and it is not assigned by agreement to one craft exclusively...."

Likewise the original Claim form dated May 6, 1987, states, under title of Employees Statement of Fact:

"Union Pacific Locomotive 3680 was dispatched from the Albina, Oregon terminal of the Oregon Division on May 3, 1987. Coded cab signal departure test was performed by Foreman Kirby Edmunds...."

Whatever the work was, both parties called it at various times a test, and the Carrier's protocol for performing the work on the lead engine of a consist is found in the fourteen (14) points outlined in the foregoing. Rather than dismiss the Claim on grounds of ambiguity of fact, for which there is arbitral precedent (Third Division Awards 26200, 26428, 26679) it is the opinion of the Board that employee-employer relations would better be served in this instance, as in earlier Award 11928, by issuing a denial or sustaining Award. This is so because these Claims represent but several of a larger number still outstanding, and because the Board has, in fact, already ruled on a parallel case between the same parties. (Second Division Award 11615).

The seminal issue in these cases is whether the work is covered by the language of the Agreement. The Board concluded in Award 11928, and for the same reasons must conclude here, that there is no contractual imperative granting this work, under exclusivity terms, to the electricians. That being established, the Board here need not rule on the factual situation of whether the work was mixed or not, and/or when all that might have started if it was mixed among the various crafts. It is sufficient here to cite Award 11615 as res judicata since that Award did address that question.

In addition to the de minimis issue raised in Award 11928, the Board also notes here claims which had been settled on this type of issue in the early 1980's on this property. Despite disclaimer by the Carrier that such would serve as no precedent for the future, the Board underlines, as it did also in Award 11615, that the "fact that the Carrier paid claims at (any) point does not affect the outcome of this case" since the Organization's exclusivity premise is not point-specific but is system-wide.

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 29th day of August 1990.