

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

STATEMENT OF CLAIM: (International Brotherhood of Electrical Workers
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe & Iron Range Railway Company violated Rules 29 and 74 of the current Shopcraft Agreement dated October 1, 1979, when Machinists were assigned to connect and disconnect traction motor leads.

2. Accordingly, the Duluth, Missabe & Iron Range Railway Company be ordered to pay Electricians four (4) hours for each violation claim at the straight time rate as follows:

Jeff Swanson	June 21, 1987	11 PM to 7 AM	4 hours
G. W. Cordle	June 24, 1987	7 AM to 3 PM	4 hours
Richard Asher	June 26, 1987	7 AM to 3 PM	4 hours
William T. Aho	June 29, 1987	7 AM to 3 PM	4 hours
Bruce A. Olson	June 29, 1987	7 AM to 3 PM	4 hours
Al Shumaker	July 6, 1987	11 PM to 7 AM	4 hours
Jeff Swanson	July 6, 1987	7 AM to 3 PM	4 hours
Richard Asher	July 8, 1987	7 AM to 3 PM	4 hours
Richard Asher	July 9, 1987	11 PM to 7 AM	4 hours

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 International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute and filed a Response with the Division.

Carrier maintains a building in Proctor, Minnesota, known as the Proctor Diesel Facility. The facility covers approximately 46,000 square feet and is used for both running and heavy repairs. Employees in seven different crafts including Electricians are employed at this location, the headquarter's point for locomotive maintenance. During the Summer of 1987, Carrier assigned Machinists to disconnect and reconnect traction motor cables in the course of truck or single wheelset/motor changeouts. This action prompted the Organization to file the Claims herein.

In defense of its petition, the Organization contends that disconnecting and reconnecting traction motor cables was covered protected work under Rule 74 (Classification of Work) and Rule 29 (a) (b) and (c) (Assignment of Work). It also points out that up until the Summer of 1987, said work was traditionally performed by Electricians. It maintains that even after the incorporation of the Incidental Work Rule as paragraph (d) of Rule 29 some twenty-five years ago, Electricians on the property have performed the work and Carrier recognized this work as overhauling, repairing, modifying or improving equipment. Furthermore, it asserts that the work of an Electrician at the drop pit during the removal and replacement of a locomotive truck requires four hours to disconnect and connect properly the leads of the traction motor. Since this represents a substantial amount of time, the work could hardly be classified as incidental. It also contends that at points other than Proctor, and Two Harbors, the Proctor Facility under Rule 29 (b) is not allowed the free running of the rules.

Carrier agrees with the Organization's assertion that Electricians had performed said work up until 1987, but argues that disconnecting and reconnecting traction motor cables was incidental to the main assignment. It observes that the main work performed by the Machinists on the claimed dates involved the changeout of wheelset/motor subassemblies or an entire truck. Thus, since this work was more time consuming and substantial than the related work of disconnecting and connecting the traction motor cables, it was the type of work contemplated as incidental work under Rule 29 (d). This provision reads:

"(d) At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it

does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental."
(Underlining ours)

Consequently, Carrier asserts that since the work involved the disconnecting and connecting of traction motor cables and said work was related to the main task of changing out a wheelset/subassembly or an entire truck, and since the time required to perform the ancillary tasks did not exceed the preponderant amount of time to perform their main assignment, the work was incidental. It referenced Award No. 1 of Public Law Board No. 1307 as further supportive authority. In part quoted:

"...Rule 71 describes the work which belongs exclusively to the Electrician's craft. The work of connecting and disconnecting traction motor cables is included in that rule and belongs to claimants' craft. But the incidental work rule, adopted by the parties at a later date, modifies and amends Rule 71. It permits employes of another craft to 'perform incidental work' of the Electrician's craft as described in Rule 71. The incidental work rule permits employes of other crafts, under specified circumstances to perform incidental electrical work described in Rule 71...."

It also argues that contrary to the Organization's contention that the Proctor Diesel Facility was not a dual purpose location, Proctor was, in fact, a running repair facility and a major repair point. As such, it was a location where the Incidental Work Rule would apply. (See Second Division Award 9271.) It takes issue with the Organization's assertion that disconnecting and connecting a locomotive traction motor improved and repaired the locomotive, arguing instead that no traction motor leads were repaired by the Machinists in any of the claimed occurrences. Finally, it argues that while Electricians disconnected and connected traction motor leads in the past, evidencing an intention

on Carrier's part not to enforce the Incidental Work Rule if the work did not fall into the categories of overhauling, repairing, modifying or otherwise improving equipment, no hiatus or past practice can estop the enforcement of clear and unambiguous rights under an Agreement. Thus, under Rule 29 (d) it had the option of assigning a Machinist the tasks of another craft, if such tasks were incidental.

In considering this case, the Board finds that the Proctor Diesel Facility is a dual purpose location and the Incidental Work Rule may be applied. Since the Rule may be applied, it could override past practice, providing that its application is consistent with the normative definition of incidental work. Since the work herein appears to be supportive of a primary work assignment, namely the changeout of a wheelset/subassembly or an entire truck, it could be reasonably considered as incidental work. The test, of course, is whether the work represented overhauling, repairing, modifying or otherwise improving equipment, or the time duration of its performance. Since upon this record we cannot conclude that the disputed work reflected overhauling, repairing, modifying or improving equipment, we must focus on the time dimensions of its performance. The Organization asserts that disconnecting and connecting traction motor leads on the claimed dates took four hours. That is, four hours on each day the Machinist(s) worked. Carrier asserts that the work involved thirty minutes, except for one Claim that required "slightly" more time. This Claim involved an entire truck having three motors. The other Claims involved one motor. In the absence of indisputable proof as to how long it took the Machinists to disconnect and connect the traction motor leads, the Board has no quantitative measurable basis for determining whether said work comprised a preponderant part of the total assignment. The main task involved a truck or single wheelset changeout and disconnecting and connecting traction motors was ancillary to the primary task. In light of these findings, the application of Rule 29 (d) and the Awards cited by Carrier, the Board must find for Carrier's position. In Second Division Award 8316 involving a similar type dispute, particularly the assertion of a protective past practice, the Board set forth five specific criteria to determine what constitutes incidental work. The work must:

1. Be performed at a running repair location;
2. Be capable of being performed by the employe who actually performs the work at the carrier's discretion;
3. Not be a preponderant part of the total work, i.e., it must consume less time than the main work assignment;
4. Be ancillary to performing the main work, i.e., involving the mere connection or disconnection of appurtenances; and
5. Not involving the overhauling, repairing, modifying or improvement of equipment.

Accordingly, applying the record evidence herein against these test factors, we find the disputed work incidental. We might add, however, the Incidental Work Rule is not an open license to encroach upon other crafts' work and each case must be decided on its own individual merits within the context of the defining criteria herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1990.