

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12476
Docket No. 12142-T
92-2-90-2-282

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(CSX Transportation, Inc.
(Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated Rule 125 of the Controlling Agreement, when on July 1, 1989, other than Electrical Worker was assigned to apply a Receiver Display Unit (RDU) and a two-way radio unit to locomotive unit 6068; and accordingly:

2. That the Baltimore and Ohio Railroad Company compensate Electrician K. O. Miller an amount equal to two hours and forty (2:40) minutes at the then effective straight time 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 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 Parties in Interest, the International Association of Machinists and Aerospace Workers, the Sheet Metal Workers International Association, the International Brotherhood of Firemen and Oilers, the United Transportation Union Yardmasters Department, and the Joint Council of General Chairmen were advised of the pendency of this dispute. The International Association of Machinists and Aerospace Workers, the Sheet Metal Workers International Association, the International Brotherhood of Firemen and Oilers, and the United Transportation Union Yardmasters Department chose not to file a Submission with the Division. The Joint Council of General Chairmen did not respond.

The events which led to the filing of the instant claim are not in dispute. The Carrier assigned a Machinist to apply a Rear Display Unit (RDU) and Track Star Radio to Locomotive 6068 at its locomotive repair facilities located at Cumberland, Maryland.

The Organization's claim alleges that such assignment violated Rule 125 of the Agreement because the assignment "is clearly the work of the Electrical craft." The Organization seeks "an amount equal to two (2) hours and forty (40) minutes pay at the effective straight time rate of pay."

The RDU is a receiving device, similar to size and shape to a radio. It displays a signal from the rear car, which serves to communicate air pressure data, to the Engineer.

The Track Star Radio is a voice communication device located in the lead locomotive. The purpose of the radio is to have voice contact, for example, with the Dispatcher, Brakeman and tower personnel.

Both the RDU and the Track Star were swapped from one locomotive to another locomotive, namely, Locomotive 6068. Both the RDU and the radio slide into a clean cab mounting rack that had been installed permanently on the locomotive console to hold the RDU and the two-way radio. The mounting rack contains the connectors for the power and antennae of the RDU and radio. The radio slides into the top of the rack and the RDU slides into the rack, directly under the radio.

Upon sliding the radio into the mounting rack, the power cable and the antenna cable flowing from the rack are connected. The power supply is connected by an amphenol connector and a coaxial cable connector lead [also flowing from the mounting rack] that connects the radio to the antenna.

The RDU also has an antenna cable and a power cable in addition to an axle connector. Bayonet connectors are used on standard units for the purpose of connecting the system.

The Carrier indicates that no Electricians have been employed at the Cumberland Ready Track for roughly eight to ten years. It points out that by its claim the Organization would require the Carrier to delay a train while it sent for an Electrician to come to the Ready Track. The Electrician would proceed to swap out the radio and RDU unit after which he would return to his shop duties, and the employees who have been idle during this period of time, would then return to their duties. In addition to the inefficient utilization of resources implicit in the Organization's claim, the Carrier contends that there is no support for the claim in the Rules.

Rule 125 of the Agreement provides as follows:

"CLASSIFICATION OF ELECTRICIANS

Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all generators, switchboards, meters, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon locally); axle lighting equipment, all inside telegraph and telephone equipment, electric clocks and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards, and on structures and all conduit work in connection therewith (except outside wiring provided for in Rule 126); steam and electric locomotives, passenger train and motor cars, electric tractors and trucks; including cable splicers, high-tension power houses and substation operators, high-tension linemen, and all other work properly recognized as electricians' work."

Rule 125 does not clearly and exclusively assign the work in question to Electrical workers to the exclusion of all other classifications. Accordingly, the Organization carries the burden of proving that Electricians, exclusively, have performed the work in question.

The Organization seeks support for its contention that the work belongs exclusively to the Electrical craft, by relying upon a letter of understanding dated March 25, 1977 from the Carrier. In pertinent part, the March 25, 1977 letter provides as follows:

"In connection with installation and maintenance of the radio units, we are agreeable to the following:

1. Radio equipment on all locomotives will be removed, installed and tested by IBEW members on the Chesapeake District of the Chesapeake and Ohio Railway Company and on the Baltimore and Ohio Railroad Company."

This excerpt from the March 25 letter cannot be severed from the entire letter. The letter refers to the "conversion of the radios to four standard frequencies" which "necessitates approximately 13,700 channel element crystal changes in approximately 3,800 radio units presently in service, requiring an estimated 7,600 man hours ..." As the letter goes on to state, the conversion "will require increasing the number of radios in service... in excess of 2,000 and will also result in an increase of the number of radio maintainers by several positions."

Obviously the March 25 letter refers to change outs for conversion purposes rather than for the purpose of swapping a radio from one locomotive to another locomotive. Indeed, at the outset of the March 25, 1977 letter, the Carrier states: "This refers to previous correspondence and our several discussions regarding standardization of radio operations to four standard frequencies on locomotives, cabooses, fixed stations..."

The letter does not contemplate any conversion project other than the conversion of the radios to four standard frequencies. There is nothing in the letter that could be construed to refer to the exchanging or swapping of units from one locomotive to another locomotive.

Furthermore, the Organization refers to the Letter Agreements dated May 5, 1986, and August 31, 1984, which in the Board's judgment are not relevant to the instant dispute. Both letters deal with monitoring devices and not radios used for voice communication.

Since Rule 125 does not clearly indicate that the work in question is reserved exclusively to the Electrical Craft, the Organization carries the burden of proving that the work has been historically and exclusively been performed by the craft on a system-wide basis. See, e.g., Second Division Award 6867. The record discloses that the work in question at the various facilities of the Carrier has not only been performed by the Electrical Craft, but other crafts as well, including Machinists, Carmen and Sheetmetal Workers. Accordingly, the work in question does not exclusively belong to the Electricians. See Second Division Award 5718.

The work involved in changing out radios and RDU's is routine in nature and requires no particular skill of any craft. The work consists of the uncomplicated task involving the placement or removal of the equipment, and the plugging in or unplugging of the equipment from the mounting rack on the locomotive console. The work takes no more than ten minutes to perform. Thus, "the simplicity of the task, the limited skill involved and the brief time to perform this work brings it within the defining parameters of the De Minimis Principle." Second Division Awards 12238, 12239.

As a final matter to consider, the Carrier contends that the principle of res judicata is applicable to this case. In correspondence between the parties, they were unable to agree on language to hold the instant claim and a companion claim in abeyance. The correspondence between the parties indicates that they referred to "similar" if not "identical" dockets which were awaiting adjudication. The Second Division Dockets were 11851-T, 11824-T and 11852-T. The Organization withdrew the claim in Dockets 11851-T which resulted in Award 12131. On January 15, 1992, the claim in Docket 11824-T was denied based upon the De Minimus Principle, in Award 12238. In the companion case, Docket 11852-T which resulted in Award 12239, it was stated that there is "nothing in the facts and circumstances and the parties' positional arguments to justify a variant conclusion" that had been reached in Award 12238.

Underlying the doctrine of res judicata is the policy of repose. In other words, when a final decision has been reached, that should be the end of it. Thus, the final decision is conclusive upon the parties in any subsequent litigation involving the same cause of action.

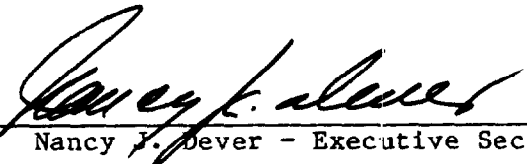
As previously set forth, the correspondence between the parties discloses that they referred to Dockets 11851-T, 11824-T and 11852-T as "similar" or "identical" to the instant case. Although several issues which have been addressed in this case were not mentioned in Second Division Awards 12238, 12239 and 12131, it is sufficient to state that these Awards were given great weight in connection with the issue dealing with the De Minimus Principle.

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 4th day of November 1992.

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