

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13068
Docket No. 12857
96-2-93-2-235

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Rule 4, Paragraphs A and E, when they used Groundmen (Helpers) to perform work belonging to Electronic Technicians' work of checking, testing, terminating, MLDT phones, fiberoptic cable and fiberoptic apparatus in Union Pacific headquarters Building on or about November 25, 30, December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, and 15, 1992.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electronic Technicians Jerry Mann, Brian Wenk, Steven Jensen, Pat McColloch, Mike Baden, Jeff Jummel, John Rokes, John Rhodd, Carol Murray, Steve McIntyre, Paul Blain, Ken Kruger and Pat Merrical, in the amount of 165 hours' pay at straight time rate of \$16.52 which amounts to \$2,722.650 and 62.5 hours of overtime at the rate of \$24.78 which amounts to \$1,548.75 for a total of \$4,271.25 and should be divided evenly amongst the thirteen (13) Claimants which amounts to \$328.56 per Claimant."

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 employee 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 were given due notice of hearing thereon.

This dispute concerns a Foreman's assignment of Groundmen to tasks on specific days in November and December 1992. Rule 4, Classification of Work, provides the following:

"(E) Groundman. A person assigned to pole setting and anchoring, reeling out and stringing wire, helping lineman, and such other work as he may be called upon to do on the ground in connection with telegraph and telephone construction and maintenance. Groundmen shall not be required to climb poles.

Groundmen will work under the direction of mechanics whom they assist. Groundmen will be kept fully occupied at Groundmen's work with a view of completing the work in a reasonable time."

The Carrier describes the work here under review as being "to lay cable and make relatively simple plug-in type connection." A letter from an Electronic Technician, one of the Claimants, asserts that the work also included "inspecting, adjusting, testing and maintaining cable." The letter also specifies the type of instruments utilized by the Groundmen to perform these tasks. (The Carrier denied receiving a copy of this letter during the claim handling process. Since it is specifically referred to in a May 3, 1993 letter which the Carrier did receive, the Board find it reasonable to accept the Claimant's letter as part of the on-property record.)

There are discrepancies in the second-hand descriptions of the work as set forth by the Carrier and the Organization. Since it was accompanied by data and by precise information as to equipment used, the Board would be inclined to give greater weight to the Claimant's letter. However, there is apparently no dispute that the work was not done "under the direction of mechanics whom [Groundmen] assist." Thus, it is not simply a question of what was done but also whether the Groundmen were under required direction in at least certain phases of the work. The Carrier argues that the Foreman was a qualified Mechanic, but surely he was acting in a supervisory capacity and not that as suggest in Rule 4(E).

The Board makes no finding on the extent of responsibility assigned to Groundmen in the normal performance of their duties. The particular circumstances here, however, provide sufficient evidence to support the Claim. The Award will sustain the Claim, except to the extent that those hours specified at punitive rate shall instead be paid at straight-time pay. The Board finds no impediment to dividing the resulting total sum among the Claimants specified by the Organization.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.