

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13129

Docket No. 12972

97-2-94-2-126

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(System Council No. 10

(International Brotherhood of Electrical Workers

PARTIES TO DISPUTE: (

(Chicago and North Western Railway Company

STATEMENT OF CLAIM:

"1. That at the Chicago Passenger Terminal on September 26, 1993 the Chicago & North Western Transportation Company violated the controlling agreement when they assigned Mechanics in Charge and Carman to perform electrical work when Electricians S. Augusta, W. Crump, M. Khan, P. Stanko and M. Whitaker were available for work that day.

2. That Electricians S. Augusta, W. Crump, M. Khan, P. Stanko and W. Whitaker be compensated equally at the overtime rate for each eight (8) hour period as per bulletin of job #708, commencing September 26, 1993 and until such time as Carrier properly assigns the work as per Rule #58 and 30 of the controlling agreement."

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.

The dispute centers upon the Carrier's use of Carman and Mechanics in Charge (MIC) to perform electrical work. The Organization alleges Carrier violation of Rule 58 and Rule 30 in permitting non-Electricians to perform protected work. Rule 58 is clear that "Electricians will perform all other work generally recognized as electrical workers work..." and Rule 30 states that "None but electricians... shall do electricians' work as per the scope and classification of work rule."

The Organization argues that the work was clearly Electrician's work. The work complained of was:

"tying on and disconnecting of all electrical 480 volt cables from locomotives and suburban commuter cars, the application and termination of all 480 volt standby power and the proper change-over of Automated Train Stop and Train Control to the cab cars."

Throughout this dispute on the property, the Organization argued that this work was a part of Job No. 708 duties and required electrical training and knowledge. The use of those foreign to the Agreement removed overtime from each of the Claimants.

The Carrier admits that Carmen and MIC's did perform the third shift electrical work supra, at the Chicago Passenger Terminal. It argues however, that its actions were permitted under Article V, the Incidental Work Rule, as amended. The Carrier defends its position by noting that the work performed did not exceed two hours; did not require special tools; and did not require special training. It was therefore permitted work which did not violate the Agreement.

The Board has studied this record with attention to the Rules, the tasks performed, Article V and the various unrebutted assertions. We conclude that this instant work was part of the regular assigned duties of third shift Electricians position, Job No. 708. The facts are that the Carrier assigned other than Electricians to perform the work on September 26, 1993 in the absence of the incumbent.

The Organization in its Ex Parte Submission and as strongly argued before this Board states "that the Employees' have submitted by evidence of probative value a prima facie case..." In reaching our conclusion we have studied the record with the

understanding that the Organization carries the ultimate burden of proof. The Carrier defended its actions arguing that the instant work was permitted work of MIC's and within Article V. The Organization must provide substantial probative evidence in this record that the Carrier's defense fails.

The Carrier has maintained it violated no Rule in that its assignment was permissible. We have further studied the facts to determine if such work was less than two hours and required no special tools or training. Carrier record of work performed on the night when the third shift Electrician's position was blanked is three quarters of an hour. This stands un rebutted. After Carrier asserted that the work performed required no special tools or special training, the Organization provided no substantive evidence to demonstrate otherwise. Our study of the work performed, guided by what has been considered in prior Awards as a special tool or knowledge fails to prove a Carrier violation of the Agreement (see particularly Second Division Award 12776; Public Law Board No. 5479, Award 2). Accordingly, the burden of proof has not been met.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 10th day of June 1997.