

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

- (1) That Assistant Track Foreman Leo Talbot, North Adams, Massachusetts, be allowed the difference in compensation received at Assistant Foreman's rate and what he should have received at Leading Electrician's rate for services rendered during the period October 10, 1946 and November 21, 1946, inclusive;
- (2) That Trackmen A. Recchia, F. M. Gayda, J. P. Mangano and A. Longe, North Adams, Massachusetts, be allowed the difference in compensation received at Trackmen's rate of pay and what they should have received at Electrician Helper's rate during the period October 10, 1946 and November 21, 1946, inclusive.

EMPLOYES' STATEMENT OF FACTS: During the period from October 10, 1946 to November 21, 1946, the Carrier was engaged in dismantling the overhead wires in the electric zone at North Adams.

The Electrical Department forces at this point were insufficient to handle this project alone. Assistance was required of the Track forces. On this account, from October 10, 1946 to November 21, 1946, the five members of the North Adams Track forces worked with the Electricians as follows:

Leo Talbot—Asst. Track Foreman—280 hrs. pro rata—11½ hrs. punitive

A. Recchia—Trackman—296 hrs. pro rata—9½ hrs. punitive

F. M. Gayda—Trackman—242 hrs. pro rata—9½ hrs. punitive

J. P. Mangano—Trackman—292 hrs. pro rata—9 hrs. punitive

A. Longe—Trackman—292 hrs. pro rata—9½ hrs. punitive

This service performed by the above named employes during this period consisted of picking up and sorting out wire that was cut up for scrap, and rolling up wire that was to be salvaged, and loading same into cars. These employes also picked up all the hangers and other fixtures which were strewn along the track as a result of this dismantling work performed by the Electricians. The hangers were then broken up and all bronze and copper parts were sorted out for salvage or scrap, as the case may be.

SUMMARY: Carrier has adequately proven that the claim of the Employees should be denied (or dismissed) for the following reasons:

If it were to be determined that Claimants were performing work other than that to which they are customarily assigned, i.e. "common labor", then to sustain a claim that they were performing leading electrician and electrician helper's work would entail an interpretation of an agreement rule, or rules, which is considered a function not of the Third Division, but of the Second Division; a scrutiny of the actual work performed by claimants clearly indicates that it was "common labor" to which they are customarily assigned; the work was not within the electrical workers' classification of work by specific understanding and agreement between the Carrier and the General Chairman of Electrical Workers.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimants, an assistant track foreman and four trackmen, seek the difference between the compensation they were paid from October 10, to November 21, 1946, inclusive, and the rates applicable to leading electricians and electrical helpers, respectively, under the Carrier's agreement with the Electrical Workers' organization.

It appears from the record that a short time before the performance of the work which is the basis of the claim, the Carrier discontinued its electric-power facilities in the zone of the Hoosac Tunnel, and that this was followed by the removal of the electrical equipment from the right-of-way. The actual dismantling was done by other employees than those with whom we are here concerned. The Claimants, during their regular hours, gathered and loaded the dismantled material, consisting of wire, hangers and other fixtures into cars so that it could be transported away. In the performance of this work they were also required to break up the insulators so that the metal parts could be salvaged and sold as scrap.

Admittedly, the Claimants were trackmen and not electrical workers. Their work was primarily the maintenance of the Carrier's right-of-way and tracks. This included the clearing of these properties of accumulated debris. While it appears to be established that the materials which the Claimants were required to handle had been left on the property by the electrical workers, we do not consider this circumstance as one of decisive importance. The matter of dismantling the electrical facilities was, of course, electrical work, but it does not follow that the task of restoring the property to normal condition did not naturally devolve upon the Claimants. The matter of breaking up the discarded insulators to salvage the scrap metal was so incidental to the main objective as not to be of controlling importance.

We must conclude, as a matter of fact, that the Claim has not been established.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of June, 1950.