



Award No. 14771

Docket No. MW-15763

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when, on March 27, 1964, it assigned other than Track Department employes to assemble two Vibrators for Jackson Maintainer. (System Case No. M-T-44)

(2) Power Tool Repairman Roy Bang now be allowed pay at his straight time rate for a number of hours equal to that consumed by the other employes in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts in this case were fully and accurately set forth in the letter of claim presentation dated May 4, 1964, the pertinent portion of which reads:

"May 4, 1964

Mr. C. W. Rosen, Payroll Accountant
Duluth, Missabe & Iron Range Railway Co.
Wolvin Building
Duluth, Minnesota

Dear Sir:

File: M-T-44

Claim is presented as follows:

STATEMENT OF CLAIM:

1. That Carrier violated the effective agreement when, on March 27, 1964, it assigned other than Track Department employes to assemble two Vibrators for Jackson Maintainer.

2. Power Tool Repairman Roy Bang now be allowed pay at his straight time rate for a number of hours equal to the number of hours consumed by the other employes in performing the work referred to in part 1 of this claim.

STATEMENT OF FACTS:

The work of dismantling, maintaining, repairing and assembling

93, Classification of Work, state as follows:

"Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors, and controls, rheostats and controls, motor generators, electric headlights and headlight generator, electric welding machines, storage batteries, axle lighting equipment, and signal equipment, installing and repairing all inside and outside telegraph and telephone equipment except when done by linemen, 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; installing and repairing all telegraph, telephone and electric pole lines and service wires either overhead or underground and all work in connection therewith except when done by linemen; including steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks; telephone, telegraph and electric cable splicing, high tension power house and substation operators, high tension linemen, electric crane operators and all other work generally recognized as electricians' work."

On this property, Electrical Workers have disassembled and assembled motors when electrical repair work is necessary. Maintenance of Way employees have dismantled and assembled motors when other than electrical work is to be performed.

The work of disassembling and assembling motors is work which, in this case, was incidental to the performance of electrical work; therefore, it has been and can be properly performed by Electrical Workers.

The claim has been handled on the property in accordance with the Time Limit on Claims agreement. Copies of the correspondence involved in the handling of the claim on the property are attached and marked as Carrier's Exhibit A.

OPINION OF BOARD: The record shows that this Division found that the International Brotherhood of Electrical Workers is involved in this dispute and, per Section 3, First (j) of the Railway Labor Act, was afforded an opportunity to be heard.

It declined to participate herein.

This dispute involves Carrier's assignment of Electricians, who are covered by another agreement and who hold no seniority under the Maintenance of Way agreement, to perform certain work on two vibrators of a Jackson Maintainer that was in the Maintenance of Way repair shop being reconditioned by Maintenance of Way repairmen, one of whom was Claimant Power Tool Repairman.

We have in numerous prior decisions held that Petitioner must prove that the work in dispute is either embraced within the scope of the agreement or is reserved to Claimant's through system-wide practice, custom and tradition.

In this case, the evidence of record clearly shows that the identical work here in dispute (servicing the vibrators of the Jackson Tamper machine, regularly and exclusively performed by Maintenance of Way repairmen from 1942 until it was removed from them and assigned to Electricians in March 1964, a continuing period of some eleven years prior to June, 1953 the effective date

of the current Maintenance of Way agreement and eleven years thereafter.

In advertising the Power Tool Repairman position in November 1942 to employees of the Track Department, Carrier included in the assigned duties of that position the servicing "at any place on the Division in the care, repair and overhaul of gasoline, electric or air driven machines used in the Department."

Claimant Bang, Power Tool Repairman, states that he had regularly performed this work since 1944.

As to the larger Jackson Maintainer Claimant asserts that since its purchase by Carrier he performed all maintenance work including, dismantling, servicing, and reassembling the vibrator motor units until he was instructed on March 27, 1964 to take two vibrators units of the machine to the Electrical Shop.

Claimant's positive assertion that at no time in the past had electricians performed this work stands unrefuted.

In fact, one of Carrier's letter exhibits shows that when Electricians belatedly claimed the work in November 1962, Carrier in its response asserted that performance of the work by Maintenance of Way employees was the established practice on its property.

Based on the evidence of record, the Board holds that Petitioner has proved its claim that the work here in dispute is reserved exclusively to Claimants through system practice, custom, and tradition, and that Carrier violated the agreement in unilaterally transferring such work to employees of another craft.

Part 2 of the claim is that Claimant be allowed pay for the number of hours consumed by others in performing the work.

The claim filed with Carrier was for 4 hours, but Carrier shows that the time consumed was 3 hours.

Petitioner does not challenge Carrier's estimate of the time actually consumed.

Part 2 of the claim will be sustained for 3 hours' pay.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD

Claim 1 sustained.

Claim 2 sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1966.

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