

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Form 1

Award No. 12543  
Docket No. 12304-T  
93-2-91-2-93

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical  
(Workers  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement, Rules 28 and 76 in particular, the Burlington Northern Railroad Company arbitrarily assigned a Machinist, acting as a Supervisor, to perform work belonging to the Electrical Craft.
2. That accordingly the Burlington Northern Railroad Company should be ordered to compensate Mechanical Department Electrician C.L. Zost of Galesburg, Illinois in the amount of four (4) hours at the punitive 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 employe or employes involved in this dispute are respectively carrier and employe 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 Party in interest, The International Association of Machinist and Aerospace Workers; The Sheet Metal Workers International Association; The Brotherhood of Locomotive Engineers; The Brotherhood of Maintenance of Way Employes; and The International Brotherhood of Boilermakers and Blacksmiths, were advised of the pendency of this dispute. The International Association of Machinists and Aerospace Workers; The Brotherhood of Locomotive Engineers, The Sheet Metal Workers International

Association, and the International Brotherhood of Boilermakers and Blacksmiths filed responses with the Board. The Brotherhood of Maintenance of Way Employees chose not to file a submission with the Board.

On December 23, 1989, the on-duty Electrician at Carrier's Galesburg Diesel Facility was dispatched to Rome, Iowa to work on a locomotive that was blocking a main line. The Electrician left the Diesel Facility at 4:15 PM and did not return until 9:15 PM. While on the road assignment no other Electricians were on duty at Galesburg and none were called in. During the absence of the Electrician, several tasks he would have normally completed were performed by the on-duty Foreman, a Machinist temporarily working that assignment. These tasks involved placing a Radio Pack on the lead unit of Train No. 141, called for service at 5:00 PM, changing Head End Monitors on Trains 160 and 65 WD, called for 7:15 PM and 7:30 PM. The Organization contends that this work should have been performed by an Electrician and filed a claim for an available Electrician who was not on duty at the time.

Carrier defends against payment of the Claim on a variety of grounds. First, it argues that the Organization failed to utilize available procedures to settle "the underlying craft jurisdictional controversy with the organization's representing other employees who routinely perform work of the type in question; that is, Machinists, Sheet Metal Workers, Brotherhood of Maintenance of Way Employees and Blacksmith and Boilermakers." Second, it maintains that the Claim has no merit because Electrician's do not possess an exclusive right to perform the work involved. Third, it notes that the tasks were simple, did not require any special skills and collectively took less than five minutes to complete. Fourth, it argues that any monetary penalty would be akin to assessment of damages and that the Board does not possess authority to assess penalties nor employ sanctions.

With regard to Carrier's first defense, an allegation that the Organization failed to follow procedures of Rule 93 Jurisdiction, reading:

"Any controversies as to craft jurisdiction arising between two or more of the organization's parties to this agreement shall first be settled by the contesting organizations, and existing practices shall be continued without penalty until and when the Carrier has been properly notified and has had reasonable opportunity to reach an understanding with the organizations involved."

The Board concludes that Carrier is simply attempting to obfuscate the issue. The work complained of was not performed by an employee assigned under one of the Shop Craft Agreements subject to Rule 93. It was performed by an employee assigned as a Foreman at the time. The fact that the individual working as a Foreman was doing so on a temporary basis and had been recruited from the rolls of the Machinist Craft does not throw the matter within the confines of Rule 93. The Claim is simply an allegation that a supervisor was performing Craft work and Carrier is not privileged to rely on Rule 93 to make it a jurisdictional dispute between Crafts.

Even if this single instance of Electrician's claiming that their work was performed by strangers to its Craft, involved members of other Craft's, rather than an employee temporarily assigned as a supervisor, the case would still not fall within the purview of Rule 93. In this regard see Award 7200 of this Division, wherein the Board concluded:

"... A jurisdictional dispute normally deals with the introduction of a new operation or procedure or a continuing dispute between crafts where classification of work rules either do not refer specifically to the work in question or where there is reasonable grounds to show that two or more rules cover the work involved. A single instance of assignment of work to one craft, where it is clearly shown that it belongs to another craft, can hardly be relegated to the jurisdictional dispute procedure. Rather, such specific and provable miss assignment may surely yield to the regular dispute procedure and/or resolution of this Board. To hold otherwise would mean that a Carrier could assign any work at any time to any craft without being responsible for damages for such error. As examples, see Awards Nos. 4547 (William), 4725 (Johnson), 5726 (Dorsey) and 6762 (Eischen)."

Carrier's second point, the work was not exclusive to that of the Electricians Craft, is found to be without merit. The Galesburg Diesel Facility is a location where members of the Electrician's Craft are assigned. Electrician's would normally be on duty in the facility at the time the work was accomplished. Electrician's would normally perform the tasks performed by the Foreman. In such circumstances allegations and/or tests of exclusivity are misplaced because the tasks performed by the

Foreman were clearly those normally and routinely performed by Electricians. Carrier has not offered a scintilla of evidence that anyone but Electricians have performed the tasks involved in this Claim at the Galesburg Diesel Facility at any other time.

Carrier's third point, that the tasks were simple, one being no different than plugging in a radio or television in ones home, is disputed by the Organization. It argues that calibration functions must be performed and that certain test are required to determine if the equipment is functioning properly. While the tasks may be characterized as requiring less skill than other Electrician's work, the Board concludes that they do involve more responsibility than suggested by Carrier. In any event, the work was normally performed by Electrician's and even though it may require less skill than other work of the Craft, Carrier is not licensed to have it performed by supervisors simply for this reason.

Carrier's final point, contending that the Board is without authority to assess penalties or employ sanctions is perplexing. Carrier seems to have based this on the decision in Brotherhood of Railroad Trainmen v. Denver and R.G.W.R. Company, (10th Cir.) 338 F.2d 407 (1964). The decision in that case was short lived. Two years after that case was decided the same court in a dispute involving the same Organization and Carrier, Brotherhood of Railroad Trainmen v. Denver and R.G.W. Company, (10th Cir.) 370 F.2d 866 (1966), effectively negated is earlier holdings. These two 10th Circuit decision, which have become to be known in the Industry as DRGW-I and DRGW-II, have been exhaustively reviewed in a number of other district and appeal court decisions as well as in Awards of all Divisions of this Board. In this regard see Third Division Award 15689, which has been frequently cited.

The Claim of the Organization has merit. It will be sustained as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 21st day of July 1993.