

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( System Federation No. 7 Railway Employees'  
( Department AFL - CIO - Carmen  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc. violated Rules 27 (a) 83 and 98 (c) of the current agreement when it assigned two (2) machinists to perform Carmen's duties in lieu of Locomotive Carpenter L. W. Winters, and Carman E. E. Hoger, Vancouver, Washington, on August 14, 1973.
2. That accordingly the Carrier be ordered to compensate Locomotive Carpenter L. W. Winters and Carman E. E. Hoger eight (8) hours each at the punitive rate on Tuesday, August 14, 1973 on the 3:00 PM to 11:00 PM shift.

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.

The Carrier's facilities at Vancouver, Washington, are composed of a Diesel Shop, Repair Track and Train Yard. Carmen are employed only on the first shift, 7:00 A.M. to 3:00 P.M., Monday through Friday in the Diesel Shop. Carmen are employed twenty-four hours a day, seven days a week at the Repair Track and Train Yard.

The Claimant Carmen were assigned at the Diesel Shop to remove and make repairs to draft gears on Engine 6125 on August 13, 1973. On August 14, 1973, the Claimants had not finished this assignment at the end of their shift, the 7:00 A.M. to 3:00 P.M. shift. The Carrier assigned two Machinists from the 3:00 P.M. to 11:00 P.M. shift of August 14, 1973, to complete the assignment,

which involved installing a draft gear and coupler and work necessary to its completion. The Claimants contend that the work of installing a draft gear and coupler is exclusively Carmen's work, and that the Carrier violated Rules 83 and 27(a) and (e) of the Agreement.

The Carrier contends that while work on draft gears and draw bars (couplers) has been performed by Carmen on the first shift, 7:00 A.M. to 3:00 P.M., Monday through Friday at the Diesel Shop, work on draft gears and draw bars on the second and third shifts, as well as Saturday and Sundays, has been performed by Shop Craft Mechanics other than Carmen. The Carrier contends that Rules 27(e) and 98(c) supports the Carrier's position.

The International Association of Machinists has a third party interest in this matter, and upon due notice presented a submission on the record. (The Carmen contend that the Machinists have set forth a new and different claim before this Board. We disagree. The Machinists are not required to meet the procedural requirements for claimants set out in the Railway Labor Act and Circular 1. The Machinists' submission states specifically in its very first sentence that the Machinists Organization "is submitting its brief to the dispute covered by your Docket No. 6793". The Machinists' submission is properly before us.) The Machinists contend that for the past 20 years the work in question has been performed by employes of the Machinists Craft in the absence of a locomotive carpenter (Carman), that is on the second and third shifts and on Saturday and Sunday. The Machinists contend that there is a jurisdictional dispute concerning the work in question at the Diesel Shop at Vancouver and that the Carmen's Organization is in violation of Rule 93 and thus improperly before the Board. The Machinists argue that the Board must dismiss the claim because of Rule 93.

Rule 93 states in part:

"Rule 93. JURISDICTION Any controversies as to craft jurisdiction arising between two or more of the organizations 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 contentions of both organizations are not frivolous and have some support in the entirety of the record. We clearly do not take a position as to the merits of this dispute between the Carmen and Machinists. Nor do we take a position on the merits of the Carrier's contentions. Under Rule 93 it is up to the parties to first attempt to settle the dispute between themselves. Rule 93 has not been complied with and we must therefore dismiss the Claim.

This Award is strictly limited to the contentions in the instant case, that is, work on draw bars and draft gears on the second shift of the Diesel Shop at Vancouver.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1975.