

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, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Rules 83 and 98c of the current agreement when it assigned a Machinist to perform Carmen's duties in lieu of Carman C. D. Greeley, Vancouver, Washington, for four (4) hours at the punitive rate on July 9, 1973.
2. That accordingly the Carrier be ordered to compensate Carman C. D. Greeley four (4) hours on Monday July 9, 1973.

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 Organization contends that on July 9, 1973, on the 7:00 A.M. to 3:00 P.M. shift, a Machinist was assigned to remove a defective coupler on Engine 4252 and replaced it with a new coupler under the direction of Foreman A. Smith (Employes Exhibit A). The Organization contends that the Machinist who allegedly performed the work under Foreman A. Smith was Machinist D. Yankee (Employes Exhibit D).

The Carrier contends that on July 9, 1973, the regular locomotive cab carpenter was on duty and performed the work involved. The Carrier further contends that Machinist Yankee was not assigned to do the work alleged nor was Foreman A. Schmidt on duty on July 9, 1973. The Carrier asserts that Foreman A. Schmidt was on vacation on July 9, 1973 (Employes Exhibit I).

The Organization attempts to refute the Carrier's contention as follows:

To Whom it May Concern:

I have studied Mr. DeButts' letter of February 28, 1974. I must refute his second paragraph in its entirety. It is true that locomotive carpenter L. W. Winters was on duty on July 9, 1973, and was performing Carman duties, but it is also true that Machinist Yankee was assigned to do Carman's work as stated in the claim, as L. W. Winters was performing duties elsewhere.

s/ Cliff Sharp

Employees Exhibit N, Attachment 1

The local chairman does not contend that he himself saw Machinist Yankee perform the work, nor does he submit a statement from any person purporting to have seen Machinist Yankee perform the work in question. Nor does the statement deal with the Carrier's contentions that the Foreman, whom the Organization alleged directed the work to be done by a Machinist, was on vacation on the date in question.

This Board does not resolve issues of credibility. It is settled beyond question that the Organization has the burden of proving all the elements of its claim. First and fundamental to the Organization claim on behalf of carman C. D. Greeley for four hours pay at the time and one-half rate for July 9, 1973, is the proving to this Board that Shift Foreman S. Smith or Schmidt did in fact assign Machinist D. Yankee to remove and replace a defective coupler. Clearly, the Organization has not met its burden of proof concerning this matter and we must therefore deny the claim.

A W A R D

Claim denied.

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.