

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{
{ Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement the Burlington Northern Inc., did deliberately assign temporary exempt personnel to ride and maintain heater cars at Livingston, Montana, work contractually belonging to the Electricians Craft as defined in our current working agreement.
2. That accordingly, the Burlington Northern Inc., be ordered to compensate Electricians R. Taylor, J. E. Ross and D. McGee for eight (8) hours compensation each at the time and one-half rate for each day that exempt personnel ride and maintain the heater cars to and from the Livingston, Montana area. Claim to be equally divided among the Claimant's and to start beginning date of January 1, 1978 and continuing until adjusted.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Amtrak Trains 7 and 8 run between Minneapolis/St. Paul and Seattle. During the winter season a heater car must be added to the train consist to provide heat for the passenger cars. The heater cars used are essentially steam generators using diesel fuel to fire the boilers producing the steam.

Carrier maintains that for a number of years it has assigned an exempt employee, or at times a machinist, to ride the heater car and "operate it", diagnosing trouble and thereby expediting repairs, where necessary, at Carrier's repair facilities by the craftsmen entitled to the work. However long such practice may have endured, the instant dispute essentially began in the winter of 1976 with the filing of a claim by Robert Hamaoka and other Electricians working at the BN Havre, Montana, Diesel Facility. The statement of claim noted

a grievance that Carrier "did deliberately order members of another craft and exempt personnel at Havre, Montana to perform Electrician's work as defined in our working agreement." The other craft alluded to was the Machinists. The disputed work was that done by the employee who rode the heater car. The claim was bottomed on the same agreement provisions as are relied on herein, such provisions being as follows:

"RULE 27(a)

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foreman at points where no mechanics are employed. However, craft work performed by foreman or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts."

"RULE 76

(a) 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, headlight generators, electric welding machines, storage batteries, axle lighting equipment, radio equipment, 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, including steam and electric locomotives, passenger trains, motor cars, electric tractors and tracks. Cables, cable splicers, and all other work generally recognized as electricians' work.

NOTE: It is understood that where the words 'the electric wiring of' appear in the electricians' Classification of Work Rule 76, the presence of such words shall not be used as a basis upon which any craft may claim work now being performed by electricians. It is further understood that the appearance of such words shall not be construed in any manner to mean that electricians' work shall be wholly and solely confined to electric wiring."

"RULE 80. TRAIN ELECTRICIANS

(a) Electricians regularly assigned to road service as train electricians will be assigned and compensated under the provisions of Rule 11. The monthly rate established for such positions will be computed on the hourly rate applicable to employees covered by Rule 76.

"(b) Electricians not regularly assigned to road service as train electricians when so used will have their time allowance computed on a basis of time and one-half for actual service rendered with a minimum allowance of four (4) hours at pro rata rate and a maximum allowance of twelve (12) hours at pro rata rate for all service rendered on any calendar day, and where meals and lodging are not provided, actual necessary expenses will be allowed. Employees so used will be paid the hourly rate applicable to employees covered by Rule 76."

The claim came up to this Division. The IAM showed little interest except to strongly urge that the work done by the heater car rider was much more mechanical than electrical in nature. Finally, the Electricians asked that the claim be withdrawn, and we dismissed the grievance in our Award 7682.

The instant grievance may be distinguished from that abandoned in Award 7682 only in the following particulars:

1. The original claim asserted that the disputed service was being assigned to "another craft and exempt personnel". The instant complaint asserts that the claimed work is being assigned to "temporary exempt personnel".

2. In support of the instant claim, and of the two companion cases, the Organization offers data as to the nature of the work done by the heater car riders, some of such data having been added to the file after completion of handling on the property.

Rather than deny or dismiss the claim on procedural grounds, we consider the claim on its merits--with the hope that the dispute may be laid to rest, and we deny the claim for the following reasons:

1. There is no specific provision in the Agreement which supports the claim.

2. The record will not support a finding that the character of the work performed by the heater car riders is essentially the work of an electrician. In reaching this conclusion, we have fully considered evidence that at about the time 13 Heater Car Rider positions were established, 3 Train Electrician jobs were discontinued, as well as the fact that rider positions have at times been filled with journeymen from the Organization. We have also considered evidence that tool boxes may have been carried by some of the riders and that some minor electrical work may indeed have been done as the rider employed expedients to keep the passengers warm. The overriding fact is recited by Local Chairman Danell in a letter to General Chairman Schwitalla, dated December 28, 1976 checking the filing of the initial claim, stated:

"I know the electricians are constantly doing the maintenance on these (heater) cars in the shop area ..."

If such maintenance is properly done, then the electrical work required of the Car Rider should actually be minor and should be merely incidental to the duties of the employee attending the heater car.

3. The Organization has not shown that the work being done by such employee is work which has been by Agreement or practice exclusively reserved to its constituents. In the absence of such proof it is immaterial whether the work is being done by exempt personnel or machinists.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of November, 1980.