

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9574
Docket No. 8563-T
2-BN-FO-'83

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, truck drivers, Don Kovar, W. Burbach, F. T. Brown, A. C. Jones, R. K. Curbach, Jay Douglass, M. S. Kruse, J. D. Wachtel and D. R. Lohmeier were relieved of their truck drivers' duties effective August 22, 1978.
2. That, accordingly, The Burlington Northern, Inc. be ordered to compensate the afore-named truck drivers for the difference in rate of pay (10¢ per hour) of a laborer and truck driver, for each hour worked from August 22, 1978, and continuing until settled.

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 were given due notice of hearing thereon.

In this matter the International Association of Machinists, the Sheet Metal Workers International Association, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the International Brotherhood of Electrical Workers, the Brotherhood of Railway Carmen of the United States and Canada, the Brotherhood of Railway and Airline Clerks, the Brotherhood of Maintenance of Way Employees, and the Brotherhood of Railroad Signalmen were notified as parties having a possible third party interest.

The substantive issue in this matter is whether the organization has established a system-wide exclusive right for its members to the job of truck driver and bus driver at the Lincoln repair track which vehicles were utilized for the transporting of car inspectors and which vehicles were used in transporting the drivers who also performed the functions of cleaning and otherwise servicing cabooses. Nine positions were abolished at the Lincoln repair track causing the incumbents to exercise their seniority to a position which paid ten cents less per hour for each such claimant. The organization alleged that these jobs were created and the

services were performed by employees represented by the Organization since 1948 on the former CB&Q lines and, that in the process of effecting the merger, the organization and the carrier had executed an agreement which preserved pre-existing rights to employees covered by the agreement. The organization submitted to the carrier on the property numerous documents executed by members of the organization and others alleging that the firemen and oilers have exclusively, historically, and customarily been assigned truck and bus driver jobs which include duties of transporting train inspectors and cleaning cabooses.

A substantially-similar document was executed by the local chairman at seven locations other than the Lincoln repair track.

An agreement between the parties had established a ten cents per hour wage differential for truck drivers and, by virtue of this agreement, the organization claims ten cents per hour for every hour since the date of the abolition of these jobs for the nine incumbents in those jobs.

The carrier objects to the procedure in which this matter has been handled. The organization initiated the claim which the superintendent declined. The General Chairman thereupon appealed the claim to the Assistant to the Vice President of Labor Relations which he declined based upon the failure on the part of the organization to present any evidence to support the claim. Some eight months later, the General Chairman presented the carrier with thirty-one statements in support of the allegations. The carrier representative objected to these statements being provided at such a late date. The carrier provided evidence which it felt negated the claim.

The carrier alleges that it informed the General Chairman that if he wished to conference the case, he should advise the Assistant Vice President of a convenient date and that thereafter the General Chairman called the Vice President asking if the case could be settled. The carrier representative referred to the carrier's last statement and said that nothing had changed the carrier's position. The General Chairman then stated that this call would be considered the conference. The carrier alleges that the General Chairman never did specify date for the conference and, therefore, no conference was held and thereafter the organization submitted the dispute to this Board.

It is clear that no conference was held on the property. The mere statement by the organization representative that a phone call is a conference does not make it one.

Numerous decisions of the Board have held that the failure to hold a conference on the property is a serious procedural flaw upon which basis the claim must be dismissed (Awards 8234, and Third Division Awards 22646, 21440, 14873, 11737).

Third Division Award 21440 provided "Claimants offered to meet with carrier in conference while he was working in the tower, or at specified times on the telephone, is not sufficient to satisfy the requirements of the act."

Some few Awards have held that a conference is not required if it would be a futile act (See Third Division Award Nos. 2786, 3269 and 10030). Applying this principle to the instant case, however, we find that although there is some confusion as to the circumstances under which a conference was not held, it is

apparent that the extended time between the denial by the carrier and the submission of additional testimony did contribute to the apparent difficulty in establishing the conference.

We do not find that the mere assertion by the organization that it still maintained its previous position relieves the parties of conducting a conference.

The conducting of a conference in this case might very well have gone a long way in resolving some of the substantive issues in this matter. Without getting into the merits of the matter by virtue of having decided this matter on a procedural basis, it is obvious that much might have been done in conference to clear up a confused record and questionable evidence on the part of both parties.

For the reasons cited hereinabove, this claim will be denied.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of July, 1983.