

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

STATEMENT OF CLAIM:

1. That, in violation of the current Agreement, the Burlington Northern Railroad arbitrarily bulletined a position at its Billings, Montana Radio Shop to a lower class of hourly-rated employee rather than to the higher class of monthly-rated employees which is required by the controlling agreement.

2. In further violation of the Agreement, the Burlington Northern did not timely reply to the grievance presented by the Local Chairman.

3. Accordingly, the Burlington Northern Railroad should be instructed to abolish the position which it has improperly established at the Billings, Montana Radio Shop and bulletin the resulting vacancy to the proper, higher-rated class of employee, Electronic Technician, as is required by the controlling Agreement.

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 employes 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 significant events leading to this claim began on August 31, 1984. At that time, the Carrier bulletined two additional Electronics Technician positions (ET) to be headquartered at its Billings (Montana) Shop. This facility is supervised by a Class 1 Working Foreman. When no bids were received, the Carrier again advertised the positions on September 27, 1984, and again no one applied.

Given that it had been unsuccessful in obtaining bids and that there had been a continued heavy work load, the Carrier bulletined for one Shop Equipment Repairman position (SER) and one ET position. Again no applications were received for the ET position and a communication lineman was promoted to the SER position. The SER can do many of the same functions as the ET, except those which require a F.C.C. licence.

It is the establishment of the SER position and its supervision by a Class 1 Working Foreman that is essentially being challenged in this claim. The Organization contends that the establishment of an SER position was violative of Rule 48(h). In so asserting, it relies on those portions of Rule 48 which reads:

"48(h) Shop Equipment Repairman Class 1-D are hourly rated employees qualified and assigned to shops and work under the supervision of the Shop Foreman, Class 1-A.

48(d) Working Foreman Class 1 is a monthly rated employee assigned to work out of a specific headquarters on a specific district which shall be the same as the technicians he is supervising."

In essence, the Organization maintains that the Class 1 Working Foreman may supervise only technicians, not Shops Equipment Repairman.

The Organization also contends that the claim was not timely denied within sixty (60) days, pursuant to the provisions of Rule 29(a). Here it relies upon the initial claim which bore a postmark of November 11, 1984 and the Carrier's denial of the initial claim which was postmarked on January 11, 1985. It submits that this totalled sixty-two (62) days and, therefore, stands in violation of Rule 29(a).

With respect to the procedural contentions, the Carrier, for its part, asserts that the initial grievance was received in its office on November 14, 1985. Thus, even if its denial was postmarked January 11, 1985, the reply was within the time limit provisions of the Agreement. The Board, after careful review, concludes that this claim should not be set aside on procedural grounds.

With respect to the merits, the Billings Shop is the headquarters point for a Communication Department Class 1 Working Foreman. It is essentially equipped in the same manner as the Carrier's other communications repair shops.

Turning to the two classes of Foremen, the Board notes that the basic knowledge, skill and abilities required to perform these duties are essentially the same. Their rates of pay are based on the rates of Electronic Technicians whom they supervise. One works in a shop constantly, the other works

both in and outside of the shop. The Working Foreman who spends most of his time in the shop generally does the same type work as the ETs and SER.

We do not find that Rule 48 restricts the Carrier from having a Working Foreman supervise other employees. Moreover, the Board observes that it is self-evident that the language of Rule 48 may lead to varying constructions, as in this dispute. Therefore, given the major effort by the Carrier to find a Technician and the fact that the Carrier's work must of necessity be performed, its actions herein cannot be said to be a misuse of its managerial discretion (see Case No. 1, Public Law Board No. 3071 involving the same parties and it addresses this general issue).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1988.

