

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement, Rules 26, 46 and 76, in particular, the Burlington Northern Railroad Company arbitrarily assigned an Electrician to perform Crane Operators' work.

2. That accordingly, the Burlington Northern Railroad Company should be ordered to compensate Crane Operators T. J. Hart, L. L. Buresh, S. R. Russell, R. D. Osborn, E. J. Shindler, G. L. Velder, R. C. Freeman and J. L. Morrison, all of Havelock, Nebraska, eight (8) hours daily at the punitive rate of pay beginning on November 14, 1989 and continuing until an Electrical Craft Crane Operator is assigned to perform the subject work. The Award to be shared equally by the Claimants.

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 basic facts of this case are set forth as follows: Carrier bulletined a second Trick Crane Operator's position on August 18, 1989. No bids were received and said position was cancelled by notice dated August 25, 1989. On that same date Carrier bulletined a combined Crane Operator's position, but again no bids were received for this position. The title of this position was Crane Operator - Relief (4-12) (40 ton and under, 40 ton and over). By notice dated September 5, 1989, this bulletin was cancelled. On November 2, 1989 Carrier bulletined a new position entitled Electrician - Relief Crane Operator (4-2, S&S) and four (4) bids were received for this position. The principal duties noted on the bulletin were "Electrical Maintenance and other assigned duties. Relief Operator of crane, 40 ton and under, 40 ton and over." The position was awarded to the applicant who was a journeyman electrician. The other three (3) did not meet the requirements of this position.

By letter dated January 5, 1990, the Organization filed a claim wherein it charged Carrier with violating Rule 26(g)(2) of the Controlling Agreement. It also cited Rule 46. Specifically, it stated: (in part referenced)

"That the B.N.R.R.C. at Havelock Car Shops violated pertinent rules of the controlling agreement when Mr. D.H. Habel posted the position of Electrician-Relief Crane Operator, which obviously is work covered in Rule 26 (g) 2, reading, in part: 'When vacancies as crane operator on cranes of less than 40 tons occur, they will be bulletined as such, and if there are no bidders from the crane operators roster, the senior electrician helper bidding for position will be assigned there to and will establish seniority as crane operator as of the first day of service as such. The foregoing portion of Rule 26 (g) 2, clearly states that separate seniority list per crane tonnage and employees who will perform said work. This work has been historically performed at Havelock facility by hiring, if needed, personnel to perform said work.'"

In response, Carrier disputed the claim and made the following comments: (in part referenced)

"You contend that Carrier violated Rule 26 (g) 2 when bulletining Electrician/Relief Crane Operator on November 2, 1989, Bulletin No. E-028-89. In re-searching our files, there is no evidence that there is a person on the district seniority roster to fill a vacancy for a crane operator's position as outlined in Rule 26 (g) 2. Everyone listed on the crane operators or helpers rosters is presented employed. However, this same rule has verbiage regarding who can bid on cranes 'over and under 40 tons,' that includes 'electricians' and also indicates they will retain their 'mechanics' seniority. Therefore, based on this portion of the rule, it appears the Carrier did not violate this rule when bulletining and awarding this position.

Rule 46, 'Help to be furnished,' in part reads, 'Sufficient helpers will be furnished to handle such work.' This is not defined but it appears to be related to work outlined in Rule 45, 'Protection to Employees.'

Further, neither of these rules identify what to do in the event that there are no crane operators or helpers available for a position other than the portion discussed. The carrier would not allow a rule to be written that could be construed to inhibit or adversely control the hiring of necessary employees."

As the claim was appealed, the Organization reiterated its initial claim position, but asserted that Rule 76 was additionally violated and noted that the bulletin read as a shopping list, "encompassing the duties of three separate and distinct positions classifications and two separate pay scales." It also charged that it was a Rule violation to assign an electrician with no crane seniority to this position over the bids of crane operators.

Carrier observed that none of the Claimants submitted bids when a Relief Crane Operator was previously bulletined and pointed out that since none of them (Claimants) held seniority as an Electrician, it was indeed permissible to award the position to the bid applicant who held such seniority.

In considering this dispute the Board concurs with Carrier's position. An analysis of the under and over 40 ton crane operators seniority lists for the Lincoln Seniority District shows that seven (7) of the eight (8) Claimants were on both the under and over 40 ton seniority roster. Secondly, in view of our decision in Second Division Award 10842 involving the same Carrier and two (2) crane operators listed on the 40 ton and over seniority roster and our decisions in Awards 11438 and 12000 involving the same parties herein, we find it was proper for Carrier to combine the Electrician's and Crane Operator's duties (both under and over 40 ton). Under Awards 10842 and 11438, we held that employees who moved to the seniority roster of electrician could still be carried on the crane operators seniority roster and under Award 12000, we held that it was permissible for "other electricians" to operate a crane (under 40 ton), when the work performed was less than two (2) hours. In the latter Award, a crane operator's position was abolished following the retirement of the incumbent and less than two (2) hours of crane operation were assigned to electricians in the course of their regular duties. We also find no evidence of crane operators systemwide exclusivity or an agreement impediment that would bar Carrier from making the contested assignment. Accordingly, upon this record we find no hard persuasive evidence that Rules 26 (g) (2), 46 and 76 were violated and thus, consistent with our decisions in the above Awards and the lack of Rule support for Claimants' position, we are constrained to deny the claim.

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 29th day of April 1992.