

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13280

Docket No. 13237

98-2-97-2-4

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:**"Dispute - Claim of Employee:**

That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the 'Carrier') violated Rules 9, 36, and 55 of the Controlling Agreement, Form 2641-Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the 'Organization') when it wrongfully and unjustly mis-assigned the Machinist work of making daily inspections of locomotives at Belen, New Mexico to train crews. The Claimants in this matter are all the Machinists on the seniority roster at Belen, New Mexico at the time the first claims was filed. They are:

R. P. Gomez	M. Gallegos	J. W. Garrett
D. G. Ridley	E. R. Chavez	C. M. Moore
V. G. Bohannon	J. J. Kaplan	A. V. Furnari
J. E. Swauger	D. J. Pacht	V. Baca
P. D. Gaede	J. T. Parsons	D. R. Sanchez
G. G. Jones	A. R. Romero	J. S. Tooker
P. C. Germain	G. Morgan	B. Schick
R. J. Gabaldon		

Accordingly, we request that the Claimants, from June 9, 1995 on a rotation basis, starting at the top of the roster and continuing, be paid

eight hours at the overtime rate of time and one-half for each and every day this improper practice is continued until it is correctly returned to the Machinist craft. This a continuing claim."

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 were given due notice of hearing thereon.

The Supervisor at Belen, New Mexico, announced to all concerned that effective June 9, 1995, the Machinists would no longer participate in the daily inspections of yard engines.

The Organization filed claim contending several rules were violated, and further that "this work was previously exclusively and historically performed by Claimants."

The Carrier's response was that:

"... It is common practice across our railroad to have trainmen involved with inspection of locomotives in yard service. ..."

On appeal, the Carrier expanded its defense stating that:

"... Work of the type at issue in this claim has not been performed on the Santa Fe exclusively by machinists; such work has been performed by switch crews at various locations, including Amarillo, Barstow and Los Angeles. In fact, such work has not been performed exclusively at Belen;

such work has at that location been performed on numerous occasions by TE&Y employees. . . .”

The Organization responded to Carrier’s response, ignored Carrier’s statements about the daily inspection being done at other points and reiterated its position by saying:

“ . . . the inspection of yard switch engines has always been done by Machinists craft at Belen, New Mexico. . . .”

The Carrier, in confirming conference, furnished the Organization statements from two Supervisors at Belen, both stating that prior to June 9, 1995, the daily locomotive inspection was a shared duty, depending upon the availability of Machinists and/or the location of the locomotive.

The Organization responded with two statements of their own, one from the Machinists Local Chairman, and one from the Locomotive Engineer’s Local Chairman. Both supposedly were to support the Machinist claim of exclusivity of inspecting locomotives at Belen, however, one statement tends to support the Carrier’s position of a mixed practice prior to June 9, 1995, at Belen. Be that as it may, the burden of proof is upon the shoulders of the Organization, and this is particularly a burden when it comes to overcoming a challenged allegation of exclusivity.

If the item of work complained of is not specifically reserved to the Organization, and they rely upon a historical past practice or a generalization such as “and all other work generally recognized as machinist work,” they must establish a system-wide practice of exclusivity. In Second Division Award 12120 and in Award 14 of Public Law Board No. 5458, both relied upon by the Organization, the historical past practice was established to the Board’s satisfaction. In this dispute, it has not been.

When the Carrier referred to practices at other points on the system where other than Machinists performed this work, the Organization never challenged the Carrier’s statement, and it is hornbook that unchallenged statements become facts when the dispute comes before the Board.

The claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 18th day of May 1998.