Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13754
Docket No. 13484
03-2-99-2-74

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim of Employee:

1. That the Kansas City Southern Railway Company (hereinafter referred to as the "Carrier") violated Rule 44 of the Controlling Agreement, effective April 1, 1980, as amended between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Organization") when it wrongfully instructed Engineer Ortiz to inspect locomotives within the shop limits instead of calling Machinist Jeff L. Schulze (hereinafter referred to as the "Claimant") from the overtime board.

2. Accordingly, we request that for this violation, the Claimant be compensated for two hours and forty minutes at his pro rata rate of pay."

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.

As Third Party in Interest, the Brotherhood of Locomotive Engineers was advised of the pendency of this dispute and chose to file a Submission with the Board.

Rule 44 of the Machinists' Agreement provides in relevant part that "Machinists' work shall consist of . . . engine inspecting. . . ." The claim dated May 18, 1998 asserts that "[o]n March 25, 1998 Engineer Ortiz was instructed by Trainmaster on duty to inspect engines BN 9650-9572 which were to be used on #5's train."

On June 16, 1998, the Carrier responded that the claim lacked sufficient information ". . . in that your claim does not specify what work coming within the scope of your agreement was allegedly performed by others, 'inspect' is not specific; you do not show what location the disputed work was allegedly performed (track, city, yard, etc); [and] what time the alleged violation occurred."

By letter dated August 7, 1988, the Organization replied, repeating the assertion in the claim that "[o]n March 25, 1998, the Trainmaster on Duty instructed Engineer Ortiz to inspect Locomotives BN 9650 and 9572 for use on Train No. 5." With respect to the Carrier's assertion that the claim did not provide sufficient information, the Organization responded that the Carrier's assertion was absurd, Rule 44 specifies that engine inspection is Machinists' work and that "[t]here is ample information to identify the time, place, and party committing the violation."

By letter dated August 26, 1998, the Carrier stated that "[t]he inspection of locomotives in the yard is not the exclusive work of Machinists [and t]hese

locomotives were located at Knoche, not at the Roundhouse, and this is work which is routinely performed by engineers and/or carmen."

By letter dated September 17, 1998, the Organization stated that the ". . . fact that the work was performed at Knoche yard and not at the roundhouse . . . is insignificant [since] Knoche track is within the yard limits where the Machinist Craft regularly maintain and service locomotives." Further, according to the Organization, "[t]he Controlling Agreement grants the Machinist Craft exclusive rights to this type of work in the area and also undeniably prohibits the trainmen from performing this Machinist work."

In a letter dated September 18, 1998, the Organization again repeated the allegation in the claim that "[o]n March 25, 1998, the Trainmaster on Duty instructed Engineer Ortiz to inspect Locomotives BN 9650 and 9572 for use on Train No. 5" and again stated that "[t]here is ample information to identify the time, place, and party committing the violation" and that "[t]he engineers are contractually prevented from performing this work within the work area of the Machinists craft."

On November 9, 1988, the Carrier responded that "[t]he Organization has failed to establish what inspection work was performed on the dates of claim" and further stated that "Locomotive Engineers are permitted to inspect locomotives under Section 3 of Arbitration Award No. 458 dated May 19, 1986."

The above correspondence constitutes the record developed on the property. That is all we can consider. A reading of that correspondence shows the Organization making a general claim that "inspection" work was improperly performed by an Engineer; the Carrier challenging the Organization to be more specific as to what inspection work was performed; and the Organization responding that it had given sufficient information.

The burden is on the Organization to demonstrate sufficient facts to show a violation of the Agreement. From what is before us, we cannot find that the Organization has met that burden. Simply put, what type of "inspection" work was performed by Engineer Ortiz on March 25, 1998 - i.e., specifically, what did Engineer Ortiz do? The Organization had ample opportunity to clarify its

allegations with more facts, but, when challenged by the Carrier to be more specific, the Organization chose to rely on the general allegation that Engineer Ortiz performed "inspection" work. Given the general allegation that "inspection" work was performed by Engineer Ortiz, the challenge by the Carrier for the Organization to demonstrate more facts and the lack of specific facts for us to determine what Engineer Ortiz did, we find that the Organization's showing cannot be enough for us to conclude that the Organization has carried its burden. The Organization might be correct that Engineer Ortiz improperly performed Machinists' inspection work. However, without knowing what Engineer Ortiz did in this case, we cannot make that finding. Without more, this claim must fail for lack of sufficient proof.

The BLE's third party position ". . . that the work of inspecting locomotives is the work of the craft of Machinists and that any incidental work that can be required of engineers, including inspecting engines, cannot be performed when to do so would infringe on the work rights of any other craft" does not change the result. We still do not know what Engineer Ortiz did.

Based on the above, this 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 1st day of October 2003.