

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13819

Docket No. 13701

05-2-03-2-42

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(BNSF Railway Company)

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe Railway Company violated the current Agreement, effective April 1, 1983, as amended, in particular Rules No. 26, 46, 48, 63 when they wrongfully assigned other than Communications employees to perform Communication work on March 29, 1998 and other dates. The case as covered herein is on behalf of Telecommunications employee Clay L. Hamilton, and is identified as Carrier File ELA-98-06-01AB. The cases being held in abeyance and to be adjudicated in accordance with the findings of the instant case, are as listed on Page 1 of the Organization’s April 1, 2003, letter to the Carrier, attached and identified as Employees’ Exhibit J.
2. Accordingly, the Burlington Northern Santa Fe Railway Company should be ordered to compensate Telecommunications employee Clay L. Hamilton, for 2.7 hours each day at the penalty rate of time and one half (1.5), for the hours specified in each claim covered within this dispute, account of Carrier’s violation of the Agreement.
3. That the Burlington Northern Santa Fe Railway Company cease and desist the improper assignment of communications work.”

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 Claimant is an electronic technician at the Galesburg, Illinois radio shop. According to the Organization, on March 29, 1998, exempt controllers engaged in testing, inspection and trouble shooting of telecommunications radio equipment. The specific work is described by the Organization in the claim as follows:

“... On March 29, 1998 at 11.24 am TNOC controller R.W.P. opened ticket # 40228 Beardstown Dispr. reports, W Vienna and Centralia radios down. At 2:48 pm same date, same ticket #, controller R.W.P. reports “good radio check on Centralia radio from TNOC, operator circuit NTF” The fact is there really was a problem as the Centralia radio took a direct hit by lighting. On March 30, 1998 at 4:46 am TNOC controller K.R.K. reported that ATT Valerie advised that Ameritec found no problem, no further complaints from the dispr, ticket closed. Luckily a very conscientious Mr. Hamilton [the Claimant] checked the circuit and found it still not working and reopened ticket. Again on April 1, 1998 TNOC tested radio and reported working OK. Later Mr. Hamilton checked radio and found it not working properly. He again had to have the ticket reopened. In both instances TNOC did their own testing without notifying a technician. Other case dates of violations by TNOC controllers are as follows. March 24, 1998 CNCC ticket # 39822. CNCC ticket #41266 dated April 12, 1998 - April 13, 1998. Also CNCC ticket # 41362 dated April 13, 1998 - April 16, 1998.”

The Organization asserts that under various rules of the Agreement, that the type of work performed by the exempt personnel can only be performed by scope covered employees. See e.g., Rule 26(a) ("None but mechanics regularly employed as such shall do mechanics' work as per special rules of each department"), Rule 46 ("Communications Employees work will consist of the inspecting ... calibrating ... and testing of the following items and related apparatus of each: ... train communication systems ... train dispatcher communications systems; centralized radio control equipment ... radio equipment; radio equipment involved in automatic train or engine control systems;"); and Rule 48(a) ("... The duties of the Electronic Technician shall be to install, assemble, dismantle, inspect, test, adjust, repair and maintain various kinds of communication and electronic equipment, such as: ... train dispatchers' telephone systems ... and any other systems or methods used for communications purposes ...").

The Carrier denied the claim stating in a letter dated May 6, 1998, in pertinent part:

"Testing of our telecommunications equipment has never been the exclusive work of Electronic Technicians. The tests described in your letter have been performed throughout the system since the inception of the communications network by supervisory personnel and our electronic technicians."

The Organization responded to that denial with the assertion that since the early 1980's, the subject testing and inspection functions have been work that contractually belonged to the electronic technicians in the Telecommunications Department. The Organization conceded that there were once wire chiefs (Clerks) who previously did similar work, but the work of those individuals came under the umbrella of the Organization. The Organization also provided a letter from an electronics technician which states that for the last 30 years electronics technicians performed the type of work and "[t]here is no case that I can recall of the supervisory personnel performing tests of electronic equipment on the BNSF railroad, former SP&S, GN, NP or BN ... [and t]o the best of my knowledge the BNSF uses Electronic Technicians at all central offices for all the work performed including testing."

In its submission to this Board, the Carrier gives a rational explanation that network controllers in the Technology Services Operation Center ("TSOC") in Fort

Worth take calls concerning communications problems and enter trouble tickets in a tracking system and, with certain types of problems, the network controllers can perform tests from the TSOC to determine if there is a problem and, if a problem exists, the matter is referred to the electronic technician at the location for repair. According to the Carrier's submission, the testing work performed by the exempt personnel was "... nothing more than a verification of whether a communications problem actually existed".

However rational the Carrier's explanation in its submission may be, that explanation is found nowhere in the on-property handling. The on-property handling shows that testing work was performed by exempt personnel in the face of rules which provide that testing is electronic technicians' work and evidence provided by the Organization showing that scope covered employees have long performed that work. All the Carrier stated on the property to rebut the Organization's claim and evidence was a very general assertion that "[t]he tests described in your letter have been performed throughout the system since the inception of the communications network by supervisory personnel and our electronic technicians." If that position is factually sound, the Carrier could have easily provided this Board with statements or other evidence to that effect. We can only decide these cases based on a record developed through on-property handling. To rebut the Organization's showing, the Carrier had to do more than just generally deny the Organization's allegations and evidence.

Given the amount of times the disputed work was performed, we do not find the complained of violations to be de minimis.

We shall therefore sustain the claim in this matter and those referred to in the on-property handling as being held in abeyance. Our determination in this case is limited solely to the matters before us. Should similar disputes arise in the future, in order to prevail, the Carrier must develop a record that rebuts the Organization's evidence.

For a remedy, the Claimant shall be compensated at the straight time contract rate in effect at the time, but only for the amount of time it took the exempt personnel to perform the disputed work. The matter is now remanded to the parties to make that determination.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 1st day of April 2005.