

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13840

Docket No. 13729

05-2-04-2-6

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU
(BNSF Railway Company)

STATEMENT OF CLAIM:

- "1. That; the Burlington Northern Santa Fe Railroad Company has violated Rules 27 and 83 of the January 1, 1997 controlling agreement on June 11, 2001, when they directed BNSF Car Foreman, Gary Jackson, to perform car repair work contained in the Carman's Classification of work Rule 83 of the February 1, 1983 Controlling Agreement. The work in question is work which should accrue the Carmen assigned at Spokane, Washington.
2. That; accordingly, the Burlington Northern Santa Fe Railroad Company be ordered to compensate Carman E. C. Sande eight hours pay at the pro rata rate of \$18.77 per hour in effect on June 11, 2001."

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 Organization maintains that a Foreman made repairs to cars at Spokane, Washington, July 11, 2001. There is no dispute that the work included straightening hand holds, side ladders and a running board bolt. The Organization argues that this work is within the Classification of Work contained in Rule 83 and its performance by Car Foreman Jackson violated Rule 27(a).

The Carrier does not deny that the work was performed or that it was Carmen's work. However, it denies violating the Agreement pointing to two basic arguments. The Carrier asserts that it fully complied with Rule 27(a). It secondly maintains that "the Carmen working in that area are stationed out of Trentwood, Washington which is not in the Spokane terminal."

Rule 27(a) states in pertinent part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts."

Central to this dispute is the language "except at points where no mechanics are employed." The Organization argues that Carmen are employed at Spokane doing car repair two shifts of every day. It provides overtime lists for work at Spokane and argues that the assignment of Foremen to do car repair occurred due to the Cancellation of the December 23, 1996 Letter of Understanding. The Organization asserts that the Carrier has circumvented the Agreement by directing the employees to start and stop at Trentwood, although they work daily at Spokane.

A full review of the evidence fails to find sufficient proof that the language of any agreement pertains to Spokane as a point where mechanics are employed. There is no direct rebuttal to the Carrier's position that the point where the Claimants are employed is Trentwood, not Spokane. The Organization states in its letter of September 12, 2001 that "sometime in the early 1980's, the Carrier chose to close the Spokane facility and established a road truck location at Trentwood, Washington, a few miles from Spokane." There is no evidence of "positions" at Spokane. Clearly, while Carmen may work at many locations, including Spokane, the point of reference is Trentwood. The claim must therefore fail.

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 April 2005.