

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13845
Docket No. 13706
05-2-03-2-50

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

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

"That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated Rules 55 and 36 of the Controlling Agreement, Form 2642-A 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 "Employees") when it wrongfully and unjustly assigned Machinist work to an Electrician at its Temple, Texas service facility instead of Machinist B. W. Smith, who shall be hereinafter referred to as the "Claimant".

Accordingly, we request that for this improper assignment of work, the Claimant be compensated for eight hours at one and one-half his pro rata rate of pay at the time of the violation."

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 asserts in the claim that on July 9, 2002, Electrician R. T. Aldrich was instructed by Roundhouse Foreman J. Cooper to perform a daily inspection on two locomotives at the Temple Roundhouse. Further, according to the Organization, Electrician Aldrich's inspection included "the inspection of the cab, engine room, checking fluid levels, couplers, trucks, wheels, brakes, etc." The Organization argued that Machinist B. W. Smith, who was on the overtime roster, should have been called to perform the work.

The Carrier responded that daily inspections are not the exclusive work of Machinists and, as long as the employee is knowledgeable of the FRA rules and regulations that govern those inspection items, the "simple task rule" allows up to two hours of this activity per day. The Carrier further responded that employees of other crafts, including Electricians and Engineers have regularly and routinely performed this work on a daily basis over the system.

In its submission, the Carrier argues that "[a] review of Rule 55, Machinists' Classification of Work, reveals that there is no mention of locomotive inspections" and, therefore, "in order to prevail in their claim, the Organization has the burden of proof of establishing that the daily inspection of locomotives has been exclusively performed by Machinists on a system-wide basis."

However, notwithstanding the Carrier's assertion, Rule 55 states:

"Machinists' work shall consist of ... engine inspecting"

We can only decide these cases based on the record developed on the property by the parties. Based on the record before us, then, "engine inspecting" is specifically reserved to Machinists by Rule 55. And, based on what is before us, the work assigned to the Electrician was not a "simple task", but rather was "the inspection of the cab, engine room, checking fluid levels, couplers, trucks, wheels, brakes, etc." on two locomotives.

The awards cited by the Carrier do not change the result.

In Second Division Award 13280, the dispute centered around language which stated “and all other work generally recognized as machinist work”. The Board appropriately held in that case that given the general nature of the rule, a system-wide practice of exclusivity must be shown. Here, however, the rule states in no uncertain terms that “Machinists’ work shall consist of ... engine inspecting ...”

In Second Division Award 13754, while the rule provided, as here, that “Machinists’ work shall consist of ... engine inspecting ...”, the Organization did not provide specifics concerning the “inspection” work performed by an Engineer. That lack of specificity - *i.e.*, lack of proof - caused this Board to ask “... what type of ‘inspection’ work was performed by Engineer Ortiz on March 25, 1998 - *i.e.*, specifically, what did Engineer Ortiz do?” Because the carrier in that case challenged the Organization to provide specifics and the Organization did not do so, this Board denied the claim finding “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 the Organization’s showing cannot be enough for us to conclude that the Organization has carried its burden ... [w]ithout more, this claim must fail for lack of sufficient proof.” That is not the case here. The evidence shows here that Electrician Aldrich’s work included “the inspection of the cab, engine room, checking fluid levels, couplers, trucks, wheels, brakes, etc.” on two locomotives. That factual demonstration distinguishes this case from Second Division Award 13574.

In Second Division Award 13755, this Board denied the claim on the grounds that the work performed by a Foreman was *de minimis*. This Board noted that “the Organization did not refute the Carrier’s assertion that “[c]hecking for ditch lights and fuel is nothing more than simple tasks that took less than five minutes.” That is not the case here. While on the property the Carrier in this case made the general allegation that “the simple task rule allows up to 2 hours of this activity per day”, the Carrier did not, as in Second Division Award 13755, demonstrate facts supportive of such an affirmative defense. Again, we can only decide these cases on what is before us and this case demonstrates an Electrician performing “the inspection of the cab, engine room, checking fluid levels, couplers, trucks, wheels, brakes, etc.” on two locomotives. Based on what is before us, we are unable to find that totality of work to be a “simple task”.

On the property, the Carrier took the position that even if a violation occurred, the remedy is not to compensate the Claimant at the time and one-half

rate. While the Claimant lost an overtime opportunity which, if he were to be made whole, would arguably require the Carrier to compensate the Claimant for that lost overtime opportunity at the overtime rate, in this case, the Organization did not dispute the Carrier's assertion that any remedy should be at the straight time rate. The Carrier has also cited authority to that end. See Second Division Award 11352. In this case, the Claimant shall therefore receive eight hours at the straight time rate.

This record was not well constructed on the property. We shall therefore limit our findings and holdings to the facts of this particular case.

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 3rd day of May 2005.