

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13846
Docket No. 13707
05-2-03-2-51

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 Burlington Northern Inc. (hereinafter referred to as the “Carrier”) violated Rule 13 of the Controlling Agreement, Form 12645, as amended, between the Burlington Northern Inc. and its Mechanical Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it failed to fill a bulletined Lead Machinist vacancy with the senior qualified furloughed employee and incorrectly assigned a foreman to perform the duties of this bulletined position that had been advertised and closed with no applicants.

Accordingly, we request that for this improper action, the Claimant be paid eight (8) hours at the pro rata rate of pay for each of the fourteen (14) days the Carrier failed to comply with the controlling provisions of the Schedule Agreement.”

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.

On September 4, 2002, the Carrier posted a Machinist Leadman position at Springfield, Missouri as a result of a vacancy created by the retirement of the incumbent. No bids were received and, by notice dated November 8, 2002, the Carrier abolished the position.

This Organization asserts that commencing September 2, 2002, the Carrier improperly assigned Foreman M. Stephenson to work the vacated position. The Organization seeks compensation for furloughed Machinist A. A. Beaver for the days that Stephenson worked the job. The Carrier defended against the claim asserting that it had the managerial prerogative to determine if a vacancy should be filled and if a Leadman should be utilized and Foreman Stephenson was utilized to supervise and lead the work group and did not perform any work exclusive to Machinists.

The burden is on the Organization to demonstrate a violation of the Agreement. That burden has not been met.

First, Rule 33 does not require a Leadman, but provides that "a working mechanic may be assigned, who will take the lead ..." [emphasis added]. Therefore, the Carrier is correct that it has the prerogative to assign or not assign a Lead. When no bidders responded, the Carrier therefore had the managerial prerogative to abolish the position.

Second, but this claim must fail for lack of proof. The Organization has not shown with specific facts in this record what work Foreman Stephenson allegedly performed. Without that kind of showing, this Board is unable to determine

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whether the Carrier improperly used Stephenson to perform scope covered work. However, the burden is on the Organization. The claim shall therefore 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 3rd day of May 2005.