

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13849
Docket No. 13697
05-2-03-2-17

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Railroad Company violated the current Agreement effective April 1, 1983, as amended, in particular Rules No. 26, 46 and 48, when they wrongfully assigned other than IBEW communications employees to perform Communication work on August 12, 1998 and others. The cases covered herein are on behalf of Telecommunications employee(s) John D. Schoeneman, et. al..
2. Accordingly, the Burlington Northern Santa Fe Railroad Company be ordered to compensate IBEW Telecommunications employee(s) John D. Schoeneman, 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. These claims are identified in Carrier Files: ELA98-10-22AA; ELA98-12-04AB; ELA98-07-017AA;(Actually ILA98-07-07AA); ELA98-10-22AC; 25-99-0011; 25-99-0012; 25-99-0013; and 25-99-0014.
3. That the Burlington Northern Santa Fe Railroad 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 Organization argues a violation of Rule Nos. 26, 46 and 48 of the Agreement. The specifics of this claim are not disputed. On August 12, 1998 an employee was moved out of a cubicle on the dispatch floor and into an adjoining room. Two individuals were then moved into the vacated cubicle. Shirley Proctor disconnected the work station; an individual from facilities moved PC's, phones, fax's and printers; and ISS reconnected the new work station. The Organization argues that this was protected mechanics work that belonged to the Telecommunications employees.

The Carrier denies that this is work protected by the Agreement. It argues that the work performed is not exclusive and has been performed by various groups over the years. It further argues that the Rules cited neither specify nor include the work disputed.

The Board notes that the work disputed herein is the "breaking down, disconnecting and re-connecting of PC's, printers, fax's and moving phones" from one location to another. Rule 26(a) states that "None but mechanics regularly employed as such shall do mechanics' work as per special rules of each department." As such, the issue at bar is whether the work was mechanics work. Rule 46, the Classification of Work Rule has been studied, but does not include any language for "breaking down, disconnecting and re-connecting" which in this

dispute is a relocation of equipment. Rule 48(a) designating the work of the Electronic Technician Class 1 includes the duties to "install, assemble, dismantle, inspect, test, adjust, repair and maintain various kinds of communication and electronic equipment, such as: telephone . . .under the supervision of the Communications Department, and any other systems or methods used for communications purposes . . ."

The Board can not find this language to be explicit. The burden of proof lies with the Organization. The Carrier denied the movement of computers and workstations were under the supervision of the Communications Department. No rebuttal proof was introduced by the Organization to refute this assertion. The Carrier further stated that the:

"Subject work is not the exclusive work of Telecommunications employees. Breaking down, disconnection and re-connecting of PC's, printers, telephones and facsimile machines is not and has not been the exclusive responsibility of any one craft nor is there any Rule that would require the Carrier to assign the work as alleged. . . and that historically the work has been performed by employees of many crafts as well as supervisors and, at times, contractors."

The record includes several statements introduced by the Carrier supporting the fact that others perform this disputed work. The Board finds that while the Organization continued to assert otherwise, it offered no evidence to the contrary.

Accordingly, the Board has found insufficient proof that the work is restricted by language to the Organization. We have found no support that this work has by practice been exclusive to the employees. In fact, the record fails to show exclusivity, past practice, plain language or proof that the Organization has the entitlement to this work. Lacking sufficient evidence, the Board must deny the claim.

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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.