

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13850
Docket No. 13730
05-2-04-2-1

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 Railway Company violated the current Agreement, effective April 1, 1983, as amended, in particular Rule 32, when designated representatives wrongfully and arbitrarily changed the rate of pay for Employees of the Carrier represented by this Organization performing service as outlined in the referenced rule.
2. That the Burlington Northern Santa Fe Railway Company be ordered to compensate Employees represented by this Organization performing service under Rule 32 in accordance with the rule until it is amended by mutual agreement of the parties.”

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 Claim of the Organization is that the Carrier violated Rule 32 of the Agreement in *exceeding* the pay required by the Rule. The Organization submitted as evidence a Carrier letter dated January 15, 1997 issuing instructions that a rate of pay of \$22.00 would be paid across the board. It alleged that the Carrier was paying relief foremen, 13 ½% above what the parties negotiated. The Rule states:

"An employee assigned temporarily to fill a Foreman's position will assume the hours of service applying to such position and will be paid a differential of 20% above his daily rate of pay for all services performed as a temporary foreman."

The Organization alleges that the Carrier overpaid relief foremen in violation of the Agreement.

The Carrier does not dispute the claim on the property. It states clearly that:

"You are correct that the Agreement provides that the rate of pay for an employee filling a position of temporary foreman is 20% above his daily rate of pay. There is no provision for the rate of pay of \$22.00 per hour. It appears that relief foreman have been overpaid by approximately thirteen and one half percent as you stated in your claim."

The Board has carefully studied the Claim, supra. Certainly, the application and interpretation of Rule 32 is clear. This is affirmed by Second Division Award No. 13318. The Carrier did not respond to the Organization's attempts to negotiate a change in the Rule while this dispute was on the property.

The Claim at bar is not seeking to "compensate" employees, as that term readily translates into a positive amending of a negative occurrence. There is certainly no dispute on the correct interpretation of Rule 32 before us, as the

Carrier agreed with the Organization as to its meaning. The Board's study of the claim is that it seeks to order the Carrier to abide by the Rule until amended and to cut the employees' pay.

The Board finds the original claim on the property; the amended claim on the property; and the final claim at bar to have substantial differences which would bar its consideration. It also finds that the full issue at bar is a Claim to order "compensation" as per the *agreed upon* interpretation of the Rule.

If there was disagreement on Rule 32, that dispute would clearly fall within Section 3 First (i) of the Railway Labor Act. There is no dispute on the property for this Board to adjudicate under the Railway Labor Act. The "claim" seeks to order the Carrier to abide by the Rule. That is a request for injunctive relief. As is well known, this Board does not have the right to issue injunctive relief (Second Division Award No. 13194, among others). For all the above reasons, the claim must be dismissed.

AWARD

Claim dismissed.

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.