

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13980

Docket No. 13863

08-2-NRAB-00002-070027

07-2-27

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

(International Brotherhood of Electrical Workers

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rule 76 in particular, representatives of the BNSF Railway Company abolished nine (9) electrical craft positions at its Alliance, Nebraska, Mechanical Department Facility and then reassigned and rebulletined that long established and contractual work to Machinist Craft employees.
2. That accordingly, the BNSF Railway be ordered to promptly reassign those employees represented by the organization to perform their contractual work on those positions that they previously held as members of the 400/600 Tracks crew.”

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 record herein indicates that on October 26, 2001, after determining that it was unable to keep pace with needed repairs at its diesel servicing facility, Alliance, Nebraska, Carrier abolished nine Electrician Leadman positions and reassigned all work on the 400/600 Track previously shared between Machinists and Electricians to Machinists. The incumbents of the Electrician positions eliminated were transferred to electrical work at the facility related to repairing bad order locomotives. This claim, filed on July, 28, 2002 and received on August 2, 2002, ensued. Succinctly, it asserts that in abolishing the Electrician Leadman positions and assigning members of the IAM to perform the disputed work, Carrier violated Rule 76 of the Agreement. ("Electricians shall perform all electrical testing, repairing and maintaining of electrical equipment on radio-controlled locomotives.") Since the duties reassigned to members of another class belong exclusively to Electricians, the Carrier must be ordered to rebulletin the Leadman positions on the 400/600 Track and restore that work to the IBEW.

Carrier first asserts two procedural defenses. First, the claim is beyond the jurisdiction of the Board by reason of its untimely filing. Rather than submitting a claim in October, 2001, when the disputed action occurred, the Organization waited until July 29, 2002 to grieve. The claim is accordingly time barred. Secondly, since the Organization maintains that case involves an intercraft dispute, pursuant to Section 3, first (j) of the Railway Labor Act, the Board must give due notice of hearing to all employees involved, whether or not original parties to the action. No such notice has been served in this instance. Because the IAM is asserted to be "involved" in the dispute and stands to be adversely affected by any award favorable to the IBEW, that union must be given notice of hearing and an opportunity to be heard.

With respect to the merits, Carrier asserts that the Organization has failed to provide any evidence of a rule violation. The disputed work had historically been assigned between the two crafts. The unexplained documentation presented on the

property not only does not support a violation but actually establishes that no Machinists stated they were performing work that could be considered Electrician's work. After ostensibly handling the rebulletining issue with Carrier officials on the property, the dispute then morphed into one relating to the reassignment of Leadman duties. If the claim is meant to challenge the March, 2002 Leadman bulletins, Carrier has an absolute right to assign any craftsman to Leadman work. If it relates to reassigning the Leadman work on the 300/600 Tracks to Machinists in October, 2001 it was both untimely and fails on the merits, since that work was shared by both Electricians and Machinists for years.

Upon careful review of the record and the parties' submissions, the Board concludes that the claim must be dismissed. The initial claim, as appealed and discussed on the property, unquestionably requested that Carrier be ordered to rebulletin nine Leadman positions on the 400/600 Tracks as Electrician Leadmen positions. After Carrier denied that claim, asserting that it could choose Leadmen from any craft under established Board precedent, the Organization appears to have modified its complaint to indicate it was not asking for the establishment of Electrician Leadmen positions but was broadly challenging Carrier's assignment of Electricians work to Machinists.

Putting aside the serious question of whether the basic injunctive relief sought is within the power of the Board to award, we acknowledging that matters are blurred here by some degree of indefiniteness in the claim and its on property handling. As Carrier correctly states, as originally posed it appears to have primarily emphasized the bulletining of the nine Machinist Leadman positions in March. That assertion, standing alone, fails to make out an Agreement violation. Carrier asserts without challenge that in the absence of any contractual limitations stating otherwise, it enjoys and has historically exercised the contractual right to determine which craft is assigned to Leadman positions. The record reflects no reliable evidence countering that assertion and plentiful prior Board authority supporting Carrier's arguments.

If the claim is considered with respect to its later acquired personality—a broader charge that Carrier had assigned Electricians' work to Machinists in October, 2001—not only has the Organization made no showing of any exclusive

right to the work in dispute or provided other critical detail, more fundamentally, with ten months elapsing between date of occurrence and date of grievance, the claim did not comply with Agreement Rule 34:

“...grievances must be presented in writing by or on behalf of the employee involved, to the office of the Carrier...within sixty (60) days from the date of the occurrence on which the claim or grievance is based.”

The Board does not discount the Organization's legitimate interests in preserving its work. But it bears the burden of proving the violation of the Agreement asserted by timely claims supported by reliable factual information. In this instance, the Board sees neither requirement met. Since the date the nine positions were abolished established the running of time limits for what is perceived here as the principle aspect of the claim it will be dismissed for failure to comply with Rule 34.

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 25th day of November 2008.