

**Award No. 4464**

**Docket No. 4320**

**2-GN-FO-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O. (Firemen & Oilers)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement, other than Classified Laborers were assigned as Engine Watchmen at Hibbing, Minnesota.
2. That Carrier's Roundhouse Foreman violated terms of the Agreement of August 21, 1954 when he failed to reply to General Chairman's letter of February 17, 1961.
3. That accordingly the Carrier be ordered to pay Roundhouse Laborers Harry Palmquist and Ernest Nelson 8 hours each at the straight time rate of Classified Laborer five days per week, and for 12 hours at the straight time rate for each Saturday and Sunday for as long as other than Classified Laborers were used as Engine Watchmen, retroactive to December 18, 1960.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Harry Palmquist and Mr. Ernest Nelson, hereinafter referred to as the claimants, have been employed as roundhouse laborers at the Kelly Lake, Minnesota roundhouse of the Great Northern Railway Company, hereinafter referred to as the carrier, since 1933.

Prior to, or about November 15, 1960, the two claimants had been regularly employed as roundhouse laborers in the carrier's facility at Kelly Lake. However, on or about the above mentioned date, carrier elected to close down its Kelly Lake Roundhouse and establish a new tying-up point for its local freight engine at Hibbing, Minnesota, about 3½ miles from Kelly Lake. Instead of placing the two claimants on the assignments at Hibbing, they were furloughed and carrier assigned two roundhouse foremen, Howard Messner and Steve Zozgornick to perform the various duties and assume responsibilities as engine watchmen. Mr. Messner has an assignment from 4:00 P.M. to Midnight Monday through Friday, and Mr. Zozgornick an

quired during the whole period of the layover. We are obliged to say that the rules do not give the questioned work exclusively to engine watchmen and that the Organization has failed to establish that it belongs to engine watchmen exclusively because of any practice existing over the years."

**THE CLAIM OF THE ORGANIZATION, THEREFORE,  
IS WITHOUT MERIT FOR THE FOLLOWING  
REASONS:**

1. The organization bears the burden of proving that the foremen at Hibbing are performing engine watchmen's duties, and that such work is within the exclusive jurisdiction of roundhouse laborers.
2. The master mechanic's statement that the foremen were performing no mechanics' work would not support the conclusion that they must be performing engine watchmen's work in any event, and especially not in the context in which the statement was made.
3. The language in the schedule agreement which mentions the classification of engine watchmen does not grant to roundhouse laborers the exclusive right to perform such work.
4. Conclusive evidence proves that engine watching has also been assigned to employes other than roundhouse laborers since at least the year 1913.

For the foregoing reasons, the carrier respectfully requests that all of the claim of the employes be denied.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimants hold seniority at Carrier's roundhouse at Kelly Lake, Minn. They were furloughed on November 18, 1960, and the mechanical department at Kelly Lake was reduced to two working foremen.

Claim is made that these foremen were doing engine watching at Hibbing, Minn. (which is considered the same seniority point for Roundhouse Laborers as Kelly Lake), in violation of the controlling agreement.

A procedural problem is presented by the Organization in that the Roundhouse Foreman, to whom the claim was presented, failed to reply within the 60 day time limit of Article V of the August 21, 1954 Agreement.

In this regard, the record discloses that two weeks after the claim was presented to the Foreman, the Master Mechanic replied in writing that the claim was denied. It is the Organization's contention that the same official

to whom the claim was presented should have responded, and not having done so, the 60 day limit comes into play and the claim should be allowed as presented.

The mandate of Article V 1(a) is that the "Carrier" shall notify the one filing the grievance of the reasons for the disallowance.

We find there was a sufficient compliance with this mandate to overrule the procedural objection.

In support of the merits of their position, the Organization points to a letter of Carrier's Master Mechanic Sullivan (Ex. "C") stating that: "There is no maintenance or mechanic's work performed at Hibbing". From this the Organization then concludes that the Foremen must be doing Engine Watching at Hibbing. This record supports no such assumption, and is devoid of any other evidence that such is the case.

#### AWARD

Claim 1 — denied.

Claim 2 — overruled.

Claim 3 — denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 4464

The record discloses the work removed from the jurisdiction of the Firemen and Oilers and transferred unilaterally by the carrier.

The majority concedes that prior to the claimants' furlough they performed the instant work at Kelly Lake and that subsequent to their furlough the work was performed by foremen at Hibbing, which is the same seniority point for laborers as Kelly Lake; therefore, the only assumption that can be logically drawn is that the work was transferred to employes not subject to the agreement governing the performance of such work.

James B. Zink  
E. J. McDermott  
T. E. Losey  
C. E. Bagwell  
R. E. Stenzinger