

**Award No. 6303**

**Docket No. 6178**

**2-BN-CM-'72**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**BURLINGTON NORTHERN INC.  
(formerly Great Northern Railway Company)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Burlington Northern, Inc. (former Great Northern Railway Company) violated Article III of the agreement signed the 24th day of April, 1970, Memorandum of Agreement Number 29, Paragraph B, Rule 94 (Jurisdiction) also Rule 17(A)(E)(overtime), of the Agreement effective September 1, 1949, when it called other than carmen to perform carmen's work on Diesel BN650 at Grand Forks, North Dakota.

2. That accordingly the carrier be ordered to compensate Cab Carpenter Robert Litzenger in the amount of two and two-thirds (2 $\frac{2}{3}$ ) hours at time and one-half (1 $\frac{1}{2}$ ) rate for May 2, 1970, which represents the amount he would have earned had he been properly called.

**EMPLOYEES STATEMENT OF FACTS:** At Grand Forks, North Dakota the carrier maintains a roundhouse, which is considered a running repair installation. Also at Grand Forks, the carrier maintains a repair track adjacent to the roundhouse. This repair track is a seven-day, three-shift operation employing numerous carmen. A seniority list for this repair track is maintained and furnishes a cab carpenter five days a week, one shift, by bulletin.

On May 2, 1970 Diesel Engine BN650 had, among other defects, a bad order cab seat which was reported on a work sheet. The carrier arbitrarily assigned a machinist to remove the bad order seat and replace it with a repaired seat from stock.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the results that he has declined to adjust it.

to the Adjustment Board for resolution of a dispute before all questions at issue had been resolved on the property.

3. The Carmen's Classification of Work Rule does not bestow on that craft any right, exclusive or otherwise, to remove and replace cab seats.

4. Absent rule provision granting the right to carmen, the Organization has not presented any proof of exclusivity by custom, tradition and practice on a system-wide basis.

**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 waived right of appearance at hearing thereon.

The Employees' position is that the question to be decided in this dispute is whether or not the Carrier was correct in not calling the Claimant to perform an assignment which is generally recognized as Carman's work on the property and instead assigning the work of the Carmen's craft to the Machinist craft.

Since the Employees are the moving party, they are charged with citing what rule or rules of the Agreement were violated. See Second Division Awards 1845, 4166, 5526 and Third Division Awards 15835, 16663, 17212, 18864. Also, the burden of proof rests upon the Employees to prove, with facts, the violation of said rule or rules of the Agreement.

In handling the dispute on the property the Employees did, in an off handed manner, allege that the overtime rule was violated. It is the opinion of this Board that before it can be successfully argued that the overtime rule in this case was violated, it must be established that the work was that of the Carman's craft and the rule of the Agreement supporting that fact.

It is further the opinion of this Board that if the work involved herein was that of the work of the carman's craft, the time involved was so slight and inconsequential that the compensatory payment would be disregarded under the DE MINIMIS rule. See Awards 4361 and 4787

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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