

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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.

Dispute: Claim of Employees:

1. 1. That the Burlington Northern Inc. violated Rules 27(a), 83 and 98(c) of the current agreement when it assigned a Sheet Metal Worker to perform Carmen's duties in lieu of Locomotive Carpenter L. W. Winters, Vancouver, Washington, for a total of twelve (12) hours and forty (40) minutes at the punitive rate on April 14, 1973 and on May 5 and 6, 1973;
2. That accordingly the Carrier be ordered to compensate Locomotive Carpenter L. W. Winters six hours on Saturday, April 14, 1973; four hours on Saturday, May 5, 1973; and two (2) hours and forty (40) minutes on Sunday, May 6, 1973.

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 Claimant, Carman L. W. Winter, is employed in the Diesel Shop in Vancouver, Washington, as a locomotive carpenter. His regular assigned hours are 7:00 A.M. to 3:00 P.M., Monday through Friday, with rest days Saturday and Sunday. On Saturday, April 14 1973, Mr. R. Rogalski, a blacksmith, on his regular assignment at the Diesel Shop, removed and replaced a coupler on a diesel locomotive. On Saturday, May 5, 1973, Mr. Rogalski, on duty on his regular shift raised a coupler and inserted a shim and replaced a broken window. On Sunday, May 6, 1973, Mr. Rogalski, on duty on his regular shift in the Diesel Shop, raised a coupler and inserted a shim. Each claim date was on the Claimant's rest days.

The Organization contends that Rules 27(a), 83 and 98(c) were violated by the Carrier when the Carrier assigned the blacksmith to do the above described work on the dates above. The Carrier contends, among other things, that the use of a machinist, blacksmith or a sheet metal worker to perform the work in question is the product of a long standing practice on the former SP & S Railway. The purpose of Rule 98(c) is to preserve pre-existing rights accruing to the employees covered by the Current Agreement as they existed in effect on the SP&S prior to the date of the merger into the Burlington Northern. The Carrier submits evidence in the form of written statements from the supervisors as proof that a longstanding practice did exist at the Diesel Shop whereby the locomotive carpenter was assigned from 7:00 A.M. to 3:00 P.M., Monday through Friday; and during other hours and on weekends the type of work at issue was performed by other mechanical forces (Carrier Exhibit 8; Employes' Exhibit I, Attachments 1 through 7). The Organization disputes that such a practice existed (see, for example, Employes' Exhibit K, Attachments 1 through 5). It is settled beyond question that this Board does not resolve conflicts in evidence. On the record before us we are unable to resolve this conflict, and, since the burden of proof is on the petitioning Organization, we are required to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of May, 1976.