

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

Claim of the International Association of Machinists and Aerospace Workers that the Carrier:

1. Violated Rule 40(a) of the April 1, 1970 Shop Crafts Agreement by its failure to furnish good drinking water artificially cooled in Hillyard Shops commencing with Monday, January 19, 1976;
2. Pay each employee of the Machinists' Craft employed in Hillyard Shops \$3.00 per day commencing with January 19, 1976 and continuing on each work day thereafter until good drinking water, artificially cooled, was furnished in Hillyard Shops.

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 waived right of appearance at hearing thereon.

Carrier maintains a Hillyard Shop complex at Spokane, Washington, for the purpose of overhauling and repairing its diesel locomotives and road-way equipment. Complaint was filed January 16, 1976. It was alleged therein that Carrier failed to furnish good drinking water in said shop facilities in compliance with Agreement Rule 40 - "Condition of Shop" - which in pertinent part, provides:

"(a) Good drinking water, artificially cooled when necessary, will be furnished. Drinking fountains will be provided where practicable."

The record reflects that water to the Hillyard facility, except for the Powerhouse, had been furnished from a 60 year old well by means of an air-activated piston action booster pump. Said pump was lubricated by oil, some of which, because of worn packing, dropped in extreme miniscule amounts into the water, which apparently gave rise to the complaint that the water at Hillyard was contaminated. Carrier, after receipt of such complaint, immediately contacted the State of Washington's Health Services Division and arranged for a water analysis. The State took a sample of said water on Monday, January 19, 1976 and forwarded same to its laboratory in Seattle, Washington for analysis. Carrier also posted signs recommending that the drinking fountain not be used.

Carrier then furnished city water, in 10 gallon Igloo containers, taken from the Powerhouse. These Igloo containers were cleaned and filled daily. Complaint was made, at the end of February, that such cleaning and filling was not sanitary. Arrangements were then made to have the function performed under the direction and inspection by a member of the organization.

Carrier also contacted the Spokane County Health District and requested a bacteriological analysis, the samples for which were taken March 30, 1976. Negative results were received April 7, 1976. Additionally, phenol tests were performed by ABC Laboratories of Spokane on April 8, 1976.

Negative results therefrom were received April 9, 1976. The final results of the tests by the state were received April 9, 1976. All tests results indicated that the water was potable and that it never constituted a health hazard.

The Board finds that while there was some delay to ascertaining with specificity the potability of the water complained of such delay was not of Carrier's making. Notwithstanding, the fact does remain that the water of complained of was "good drinking water". Further, that during the period of awaiting the results of the water analysis, the record does not reflect any showing that water furnished in the Igloo containers was not good drinking water.

Consequently, it is held that the necessary burden of the proving the threshold issue in this Claim, to wit - that Carrier has not furnished good drinking water, was not met by the petitioning party. Merely saying something is so, unfortunately, doesn't make it so. The Employees therefore failed to carry their burden of proof. Rule 40(a) was not shown to have been violated. It is not necessary, therefore to reach and pass upon the monetary aspect of the claim. In the circumstances this Claim will be denied.

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Award No. 7557
Docket No. 7451
2-BNI-MA-'78

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 16th day of June, 1978.