

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement the Carrier assigned work to the Wire Chiefs at St. Paul, Minnesota to which the Communication Department Employees have a contractual right to perform.
2. That accordingly the Carrier be ordered to compensate Mr. J. F. Vye and Mr. W. A. Schussler, Electronic Technicians, eight (8) hours pay, for each Claimant, at the pro rata rate of the Electronic Technician Class 1, starting December 8, 1978 and continue until adjusted.

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.

This case results from a claim by the International Brotherhood of Electrical Workers (I.B.E.W.) that the Carrier improperly assigned work within its jurisdiction to employees who are members of the Brotherhood of Railway and Airline Clerks (B.R.A.C.). The claim originated in December, 1976 at the carrier's facilities located in St. Paul, Minnesota.

It is the basic position of I.B.E.W. that the work on microwave equipment is exclusively within its work jurisdiction, and therefore cannot be performed by members of B.R.A.C. It cites the part of its Collective Bargaining Agreement which refers to the duties of the electronic technician, which include the adjustment in repair of various types of communication and electronic equipment, including microwave equipment. Further, I.B.E.W. cites that part of its Collective Bargaining Agreement which calls for the preservation of work performed by its members prior to the Burlington Northern merger.

The I.B.E.W. relies upon the fact that a license issued by the Federal Communications Commission is required for work upon the microwave equipment. They note that only members of their union have such license, and that the members of B.R.A.C., specifically the wire chiefs, do not possess such licenses. Further, I.B.E.W. cites a communication in November, 1976, from a supervisory representative of the carrier, that only members of I.B.E.W. shall make all level adjustments on microwave equipment.

I.B.E.W. submitted an affidavit dated February, 1978, to the effect that the B.R.A.C. members, in the job title of wire chief, have made dial tests and basic adjustments, but not repair work. It argues that this work was accomplished by means of dialing of a telephone number to make a test of the circuit involved.

Further, I.B.E.W. has cited work logs of March, 1978, which details work performed by wire chiefs. They have interpreted these logs to mean that the wire chiefs have made adjustments on microwave equipment.

The carrier contends that the claim by the I.B.E.W. is vague in the nature of the violation, which is alleged to have occurred in December, 1976. It contends that no new work assignment was given to the wire chiefs at that time. Further, the carrier contends that the evidence of work performed in 1978 is not sufficient to show that the adjustments noted were repair work on the microwave equipment.

The carrier contends that the history of the work jurisdiction of both unions, is consistent both before and subsequent to the merger. The carrier contends that the claim of I.B.E.W. is not timely because a claim must be submitted within 60 days of the alleged violation, and that the merger occurred in 1970.

The carrier submits that the I.B.E.W. has not met its burden of proof of a violation occurring in 1976. They note that the only evidence cited by I.B.E.W. is the logs of March, 1978. Further, they contend that the logs fail to specify who performed the work of adjusting the microwave equipment.

Finally, the carrier argues that no damage was shown to the I.B.E.W. members. They note that the I.B.E.W. members were fully employed during the times in question.

The intervening union, B.R.A.C., contends that it has a scope of work agreement clause in its Collective Bargaining Agreement with the carrier. They contend that this provides for the employees, who are represented by it, to continue to perform the work of patching and bridging of communication circuits. B.R.A.C. cites numerous prior decisions that affirm its right to make tests on circuits. These citations include instances where B.R.A.C. members have made tests of circuits by use of telephone calls and telephone conversations.

B.R.A.C. contends that the allegation of the I.B.E.W. that the making of adjustments on the microwave equipment as repair work is an attempt to raid its jurisdiction. They contend that their members are not seeking to do the repair work which is covered by the I.B.E.W. contract and by the FCC license. B.R.A.C. denies that it is seeking to perform any work which amounts to repair work of the communications equipment.

Based upon the above quoted positions of the parties, it is clear that one overriding principal is agreed to by all three parties. This principle is that the major repair work on communications equipment is appropriately the work of the I.B.E.W. employees. Indeed, B.R.A.C. has specifically disavowed any claim to perform the repair work on equipment. Further, the employer representative, shortly prior to the filing of this claim, specifically stated that the I.B.E.W. does that work which influences the microwave transmitter deviations. Finally, this major repair work appears to be that which requires an FCC license.

The question remains then, whether the testing, patching, and bridgework which had been performed by the wire chiefs is in conflict with the I.B.E.W. work jurisdiction. On this point, the record does not sustain the claim of the I.B.E.W.

A significant distinction was made in a recent decision by the Third Division, in the case of B.R.A.C. and the Baltimore & Ohio Railroad Company Award No. 22384. In this decision by Referee Louis Yagoda, the following distinction was stated:

"On the basis of close study of the question and our best judgment from the facts of record (some of them conflicting), we conclude that we must follow for the circumstances here the line of Awards which have distinguished between the testing, patching and bridging work done by the communication crafts in monitoring the equipment with which they send and receive messages (pending permanent repair to deficiencies found, by the electrical or signal maintainer craft) and the repair function which may require independent or additional testing, bridging and patching by the repairman or maintainer as part of his rectification function."

This distinction is a reasonable delineation of the work jurisdictions of the competing unions. Further, it is a logical resolution of the apparent conflict between use of the term "adjustments" in the performance of the work of the two union's members.

Although it is not clear from the record that the work performed in March, 1978, was done by the wire chiefs, even if such work was performed by them, the tests and adjustments were of a temporary nature. Any testing or major adjustment in equipment would then be performed by I.B.E.W. members, as stated in the affidavit of February, 1978.

While the work of the employees represented by the two unions may be sufficiently close to blur the fine line between temporary adjustments as distinguished from permanent adjustments, the record here is not sufficient to delineate the work jurisdiction with any greater precision. For any decision to make the technical assessments necessary for a more specific ruling, the record would require an in-depth analysis of the work of each party in specific trouble situations. This record, even considering the evidence of events in 1978, is insufficient for any definitive findings concerning work jurisdiction.

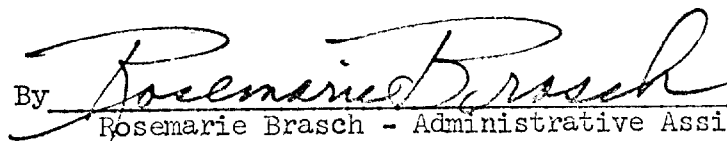
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.