

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That the Burlington Northern Railroad Company violated Rules 1 and 2 of the controlling agreement when employees of the Brotherhood of Railway and Airline Clerks were assigned the work of unloading, loading and distributing material at the Springfield, Missouri Roadway Equipment Shop.

2. That accordingly, the Burlington Northern Railroad Company be ordered to pay Laborers Clarence S. Kisling, Lyndel E. Morrow, and Cecil R. Murray eight hours pay at the pro-rata rate per hour (\$11.32) for each day, Monday through Friday, starting September 2, 1986, and continuing until said violation is stopped and the work of loading, unloading and distributing materials at Springfield, Missouri is returned to the Firemen and Oilers Craft.

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 employees 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.

As Third Party in Interest, the Brotherhood of Railway, Airline and Steamship Clerks was advised of the pendency of this dispute, and filed a response with the Division.

The events giving rise to this Claim occurred at the Carrier's Roadway Equipment Shop in Springfield, Missouri.

The Organization claims that a violation of Rule 1 (Scope) and Rule 2 (Classification of Jobs) of the Agreement was committed by the Carrier when it removed work historically and traditionally performed by laborers of the Firemen and Oilers craft and transferred said work to BRAC.

In discussions on the property the Carrier denied the exclusive right arguing that the disputed work had been historically handled by BRAC. It also argued that the Claim was untimely.

As a preliminary point, a review of the Carrier's Ex Parte indicates numerous assertions, arguments and positions which were not made a part of the record on property. Those issues have been disregarded as our review is limited solely to evidence and argument raised and considered on the property.

Procedurally, this Board has carefully reviewed the issue of whether or not the Claim was untimely. The Organization filed Claim dated September 1, 1986 "starting September 2, 1986, and continuing..." based upon the reorganization. The date of the reorganization is not in the record. The Carrier, by letter of September 16, 1986 stated that the Claim "far exceeded" the sixty day time limits of the Agreement. The Organization denied the Claim exceeded the time limits as it was based on September 2, 1986. The Carrier's last response on property reasserted that the Claim was untimely.

Before this Board can reach the merits, it must have a record substantiating the details of the occurrence. The reorganization occurred on an unknown date. On that date changes occurred in the handling of materials from Fireman and Oilers to BRAC. The Carrier argued that the Claim was beyond the sixty (60) day time limit. The Organization included nothing in the record to identify specifically when and what Carrier action gave rise to the September 2, 1986 Claim. The Organization did not say that this was a continuous time Claim.

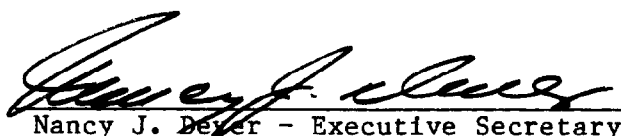
For this Board to determine whether the Claim is of a continuing or non-continuing nature the Organization must provide the requisite facts. This Board will not speculate. Assertions must be born out by facts. The Board has not been advised by this record as to what specific Carrier actions gave rise to this Claim. It may be that the reorganization resulted in work re-assignment, but under what circumstances and on what date this began we are unaware. Consequently, the Board finds that the Organization did not overcome the Carrier's charge that the Claim was untimely. Therefore, the Board will not reach the merits under this particular record.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 5th day of April 1989.