

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Upgraded Electrician J. I. Brown, III, was removed from his assigned position at West Burlington, Iowa effective May 1, 1987, and replaced on that position same date by an employee of another craft.

2. That accordingly, the Carrier be ordered to compensate Electrician J. I. Brown, III for all lost wages, vacation and all other benefits due him beginning on date of May 4, 1987 and continuing 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 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 Transportation Communications International Union was advised of the pendency of this dispute, but chose not to file a Response with the Division.

The instant Claim alleges that the Carrier improperly assigned work which belonged to the craft to an employee who was covered by the Clerks' Agreement. In denying the Claim the Carrier argues that work of the type had never been under the exclusive purview of Electricians and that it had been performed by other crafts and by Clerks.

The facts of the case show that after the merger of the Frisco and the Burlington Northern Railroads positions were established at the Carrier's West Burlington facility which involved the ordering and receiving of parts at the various work stations located throughout this facility. The Carrier issued job bulletins to that effect for the Electricians' craft. Thus from 1981 through 1987 the work of ordering, receiving and stocking material in the Traction Motor Department was done by Electricians. In 1987 this work, according to the Claim, was transferred by Bulletin to a BRAC employee. The Organization argues that this was in violation of Rule 98(c) which states the following:

"It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN, SP&S and Frisco railroads prior to the dates of the individual mergers; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

The question to be resolved is whether the work at bar was exclusively done by Electricians prior to it being assigned to the Clerks' craft in 1987, and whether such assignment did, in fact, result in the Carrier's violation of Rule 98(c) as alleged.

A search of the record fails to produce proof that the Electricians exclusively did the work in question, as a matter of past practice. It is true that they did the work in question since 1981 at the West Burlington facility. But there is no substantial evidence that the craft did work of this kind prior to that date and/or that they did so as a matter of system-wide custom. Work of ordering, receiving and stocking materials in various departments at West Burlington accrued, in fact, to many different crafts at this location. The conclusion warranted here is consistent with that of the Board in earlier Second Division Award 10514 wherein the Board concluded, citing earlier precedent:

"...Where work may properly be assigned to one or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of plain language indicating such an intent...."

The Organization has not produced a Rule, in this case, to allow the Board to conclude that it had the exclusive right to perform the particular work complained of. See also Second Division Awards 9062 and 10091 -- on requirement to produce contract language to substantiate a Claim of the type here in question.

More germane to the instant case before the Board, however, is evidence presented by the Organization to the effect that jurisdictional right over the work in question did not exist prior to the first bulletining thereof in 1981. During the exchange on property this was underlined by the Carrier. The position of the Organization on this issue is that if the work was done prior to 1981 by another craft it is the responsibility of affirmative defense by the Carrier to present evidence to that effect. On this point, the Board must disagree with the Organization and conclude that logic is on the side of the Carrier. Somebody did work of the type in question prior to 1981. It must have been employees belonging to some other craft since the Organization cannot present evidence to the effect that it was the Electricians' craft who did the work in question prior to the dates of the Bulletins they present. As moving party to the Claim the evidentiary burden here is on the Organization (Fourth Division Awards 3379, 3482; Public Law Board 3696, Award 1 inter alia). Such burden has not been sufficiently met.

Lastly, the Board has ruled in prior Awards on Rule 98(c), on which this Claim is based, and its conclusions in those Awards are consistent with the Board's findings herein. More recently, in Second Division Award 7487, referencing prior Awards, the Board states:

"The matter of application of Rule 98(c) was the subject of extensive treatment in Second Division Award No. 6867...involving the same Carrier as in the instant claim and the Sheet Metal Workers, and in Second Division Award No. 7244 ...Those awards found that in order for work to be retained based solely on the provisions of Rule 98(c), the claiming party must show an exclusive system-wide practice on the former component railroad prior to the merger."

On the basis of evidence found in the record as a whole, and on the basis of precedent, the Board will deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1990.