

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 the Burlington Northern Railroad arbitrarily assigned employees from the Machinist Craft to operate the drop and transfer table at its Havre, Montana Diesel Shop beginning December 9, 1987 and including December 22, 1987 and January 12, 15 and 16, 1988. The subject drop and transfer table had heretofore been historically operated by the Electrical Craft at the Havre, Montana Diesel Shop.

2. The Burlington Northern Railroad did continue to violate the agreement and arbitrarily assign Machinists to operate the subject table on January 19, 22, 23, 24, 25, 28, 29, 1988. February 5, 7, 11, 12, 13, 14, 16, 20, 23, 24, 29, 1988 and March 1, 3, 5, 6, 7, 1988.

3. Claims filed under date of February 1, 1988 and March 15, 1988 identified respectively as Files ASCC 88-03-08 and ASCC 88-04-05 have, because of identical subject matter, been combined for this submission to the Board.

4. That accordingly, the Burlington Northern Railroad be instructed to compensate Havre Electricians D. L. Pyle, R. E. Kuhn, W. B. Moeller, L. D. Olson, D. J. Dalnes, K. L. Loftus, L. J. Miley, J. W. Cole, W. Purkett, V. C. Campell, M. R. Wasson, R. H. Hamaoka, D. V. Burrington, J. D. Lieberg, O. A. Grindeland, B. A. Vining, G. F. Goodnough, R. C. Frey and K. H. Hamaoka as set forth in the two initial claims, 2.7 hours at the punitive rate for each violation occurring on the previously cited dates in one and/or both of the claims in which they are included. The Agreement of April 1, 1983 is controlling.

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.

The Organization charges that Carrier violated the Controlling Agreement, when employees of the Machinist Craft were assigned to operate the drop table at the Havre Diesel Shop. It asserts that prior to the dates when Machinists performed this work, Electricians operated the drop table, transfer table and overhead cranes and said work was routinely accepted as Electricians work. It notes, however, that except for a brief nine month period in the late 1950's when Machinists erroneously operated drop and transfer tables, electricians had exclusively operated drop and transfer tables at the Havre Diesel Shop, when removing and/or replacing locomotive traction motors or trucks. It points out that prior to the 1970 merger when the Burlington Northern Railroad was created, Electricians at the Havre Diesel Shop operated the drop table under the Great Northern Railroad Electrical Workers' Special Rule No. 78 and said work was protected when Rule 98 of the current Agreement was negotiated. This Rule protects the pre-existing rights accruing to employees under the Agreements of the pre-merged railroads. It further observes that the September 3, 1949 craft jurisdictional Settlement Agreement involving the Machinist and Electrical craft workers effectively resolved the issue as to which craft would operate transfer tables on the Great Northern Railway property. Under this Agreement, the operation of transfer tables came under the protection of Rule 78 (pre-merger Agreement) and thus by extension under the present controlling Agreement, the work is protected by Rule 98. It also asserts that Letter of Intent No. 4 to the 1983 contract revision was protected by the current Agreement. This letter reads:

"With reference to the Memorandum of Agreement revising Rule 76 agreed to this date to which this Letter of Intent is attached and made a part, it is agreed that at points where electricians are operating drop tables and/or transfer tables they will continue to do so in accordance with Rule 98(c)."

The Organization submitted statements from Electricians and several Machinists attesting that Electricians had operated the drop table at the Havre Diesel Shop. It acknowledges Carrier's averment that Machinists operated the drop table on occasions, but notes that said work was performed on the second shift where there was a shortage of Electricians. In response to Carrier's position that the work was incidental to the Machinists primary task of removing and applying traction motor wheel sets from locomotives, the Organization contends that the work was not incidental, but instead was related to the Electricians primary task of removing electrically bad motors from locomotives. It submitted time work data to demonstrate the work was not incidental or de minimis.

Carrier does not dispute the Organization's position that operating the transfer table was assigned to Electricians under the 1949 and 1950 jurisdictional Agreements, but points out that under the 1950 Agreement (June 21, 1950), the parties agreed Electricians would fill transfer table operator positions. However, since turntable and transfer tables are no longer in the agreement, the jurisdictional Agreements are moot. It also contends that for about thirty years, the Electrical craft did not contest Machinists using drop

tables in connection with changing out traction motors and wheel sets from locomotives, but did so when the drop table was modified to avoid the task of climbing into the drop pit to operate the lateral controls of the machine. It maintains that the Doctrine of Equitable Estoppel applies to these specific circumstances. Furthermore, it recognizes that the modified Electricians Classification of Work Rule (Rule 76) in the 1983 Collective Agreement made reference to Electricians' work on transfer and drop tables, but notes that the work identified in the new Rule 76 is maintenance work only and not the operation of controls governing movements. It also asserts that the Organization has not presented evidence that drop tables had been performed exclusively systemwide on the former Great Northern Railroad or evidence showing exclusivity at the Havre Diesel Shop situs. It avers that even if the Organization were to demonstrate exclusivity, the actual work performed on the claimed dates by Machinists was incidental to the main task of changing out traction motors and wheel sets. Thus, under Appendix L or the Incidental Work Rule adopted into the 1970 National Schedule Agreement and included in the Organization's 1983 collective Agreement, the contested work would have to be considered a de minimis task. It also asserts that since the matter clearly represents a jurisdictional dispute, the Organization should have first tried to resolve the issue via Rule 93.

The Machinist Craft as a Third Party in Interest contends the Electrical Workers have not shown either by past practice or a specific Rule that the work of operating drop tables accrues exclusively to Electricians. It asserts that the work of removing or applying traction wheel sets from locomotives actually accrues to the Machinist Craft under Rule 51 of the Machinist Agreement, since Machinist work under Rule 51 consists of operating machinery in connection with "applying and removing locomotive equipment components and appurtenances such as traction motors." It points out that the two crafts were unable to resolve a similar dispute in 1955, thus underscoring its position that a jurisdictional dispute still exists. It maintains that Letter of Intent No. 4 does not provide systemwide exclusivity and, as such, the Electrical Workers must demonstrate point exclusivity. It submitted statements from Machinists employed at the Havre Diesel Shop who attested that Machinists operated the drop table at this situs. It also asserts that the Electrical Workers Agreement does not abrogate the Incidental Work Rule (Appendix L).

In considering the voluminous record before us, the Board is compelled to make the following findings. Firstly, the 1949/1950 jurisdictional settlement did not address per se drop tables and thus the issue has not been effectively resolved. This is supported by the unresolved 1955 jurisdictional dispute between the Machinists and Electrical Workers Crafts. Secondly, prior to 1983, the Electrician's Classification of Work Rule did not mention drop tables and later when the Rule was expanded to include drop tables said inclusion applied only to maintenance work. This is unambiguous language. Thirdly, while Letter of Intent No. 4 offers some support to the Electrical Workers position, this provision related to points where Electricians were operating drop tables and/or transfer tables in 1983. Since there is no crystal clear unequivocal evidence showing that Electricians exclusively

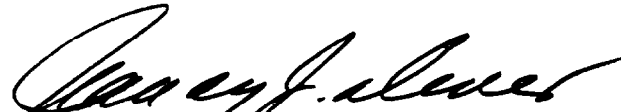
operated drop tables at the Havre Diesel Shop, specifically in view of the rebuttal statements offered by Carrier and the Machinist Craft, the Board cannot conclude that Electricians exclusively performed this work. Accordingly, for these reasons, we find that the Organization was required to resort to the jurisdictional dispute resolution procedures of Rule 93 and, as such, we are forced to dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1992.