

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12512
Docket No. 12134
93-2-90-2-278

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

"1. That in violation of the current Agreement, Rules 26, 48 and 63 in particular, the Burlington Northern Railroad Company assigned work to the Electronic Technicians headquartered at Minot, North Dakota which should have been performed by District Lineman John F. Elliott, formerly headquartered at Minot, North Dakota.

2. That this claim shall be continuing and contemplate all time use by any person(s) performing this contested work within the territory formerly assigned to District Lineman.

3. That accordingly the Burlington Northern Railroad Company be ordered to compensate District Lineman John F. Elliott for thirty-seven (37) hours at the punitive rate as specified by his initial time slips and as subsequently 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 waived right of appearance at hearing thereon.

On March 31, 1989, Claimant submitted five time slips claiming 37 hours straight time compensation for work performed on three dates by Communications Department Electronic Technicians at Carrier's microwave towers located at Maddock, Epping, Lostwood and Tayus, North Dakota. The claims involving the time slips were denied and while the matter was on appeal the dispute was broadened to the continuing violation, as now described in the Organization's Statement of Claim before this Board. Carrier seeks to have the matter dismissed on the basis that the Claim now before the Board differs significantly from the claim handled on the property.

This is the second such Claim involving allegations of Electricians that Communication Department Electronic Technicians were improperly assigned functions at Carrier's microwave towers, wherein Carrier defended, inter alia, that the claim was altered significantly from that handled on the property. In Second Division Award 12062, the Board dismissed the earlier claim. We are forced to the same result here. The variance between the original claim and that presented to the Board is substantial and significant. It is more than mere editing or restatement without affecting substance. In fact it is altogether a different claim based on different theories. Accordingly it must be dismissed.

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 17th day of February 1993.