

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13296

Docket No. 13235

98-2-97-2-1

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

(International Brotherhood of Electrical Workers
(System Council No. 16

PARTIES TO DISPUTE: (

(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the controlling Agreement, Electronic Technician Larry Crossman of Spokane, Washington was not compensated the differential of fifty cents (.50) per hour as outlined in the National Skill Study Agreement effective February 4, 1994.
2. That accordingly the Burlington Northern/Santa Fe Railroad Company should be directed to compensate Electronic Technician Larry Crossman as outlined in the National Skill Differential Agreement."

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 employee 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 dispute involves what differential pay is due a Communications Electronic Technician who does not have an FCC license. The only dispute between the parties is the definition of the parenthetical phrase "or equivalent" that has been intended by the parties as an exception to the requirement of having an FCC license which, of and by itself, is one third of the criteria necessary to qualify for the differential of fifty cents an hour.

The National Agreement language is as follows:

"... 4. Communications electronic technicians (or equivalent maintainers) with a valid FCC license (or equivalent) who regularly perform repairs and adjustments on electronic equipment shall receive a differential of 50 cents per hour for all hours worked. . . ."

Claimant benefits from an Agreement reached in 1972, that permits employees who held seniority as Telephone Inspector Class I-A positions to place themselves on any new position or vacancy of Electronic Technician without being required to possess an FCC license.

This Board, in reviewing the entire on-property handling, finds that the phrase "or equivalent" is so ambiguous that without the parties reaching an accord as to what that phrase actually means, cannot adequately define the phrase. The burden of proof in Rules cases advanced to this Board rests solely upon the shoulders of the petitioning party.

What the Organization seeks is to have this Board define the phrase "or equivalent" based upon the fact that Claimant has been allowed to work on an Electronic Technician position, satisfactorily completing all work assigned to him without the benefit of an FCC license. This Board will not do that. It has insufficient evidence to issue a sustaining Award that is final and binding upon the parties without overwhelming evidence of what the parties who negotiated the Agreement meant by the phrase "or equivalent." The claim will be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of June 1998.