

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13367
Docket No. 13318-T
99-2-98-2-2**

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

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(The Burlington Northern Santa Fe Railway
(Company**

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the ‘Carrier’) violated Rules 36 and 55 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the ‘Organization’) when it wrongfully and unjustly assigned Machinists work to the Carman Craft instead of one of the Machinists from the Seniority Roster at the Carrier’s Facility at Fort Worth, Texas (hereinafter referred to as the ‘Claimants’). Their names are:

Miller, E.J.	Culp, E.J.	Murphy, A.
Cowan, S.R.	Marsden, N.M.	Bennignfield, B.C.
McFarland, M.W.	Brown, B.J.	Nemitz, D.W.
Shemberger, R.A.	Bohannon, J.	Pruitt, M.
Duvall, C.		

Accordingly, we request that for this continuing violation of the Agreement, the Claimants be compensated, equally as a group, at one and one-half times their pro rata rate of pay for each hour the Carman Craft improperly performed Machinists work beginning on or about September 12, 1996 until it was discontinued on or about July 1, 1997.”

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.

As Third Party in Interest, the Brotherhood Railway Carmen, Division of Transportation Communications International Union was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

Effective September 12, 1996, the Carrier and the Organization entered into an Implementing Agreement required pursuant to Section 4, Article I of the New York Dock Protective Conditions effecting a consolidation of yards, forces and work functions of both railroads at each location at Amarillo, Texas, and Fort Worth/Alliance, Texas.

This merger resulted in the movement from a facility controlled by the former BN to a shop facility just north of Fort Worth which was former SFE. It was further agreed the SFE Contract Rules would apply.

At the former BN facility (the North Yards), Machinists had historically communicated power needs. At the merged facility, Switchtenders, then Carmen, were used to communicate the power needs, but the Carrier determined the most efficient method was to use the Switchtenders, and from the evidence available to this Board, the Switchtenders have once again resumed this function and are doing the work.

The claim before this Board is only for the period of time the Carmen did this work. No claim has been filed contending a contract violation when the Switchtenders had and/or are now performing this work.

The Carrier defends its actions by challenging the Organization to prove system-wide exclusivity (which they have not), while advising the Organization about the fact the Switchtenders were doing the work before Carmen were assigned, and then resumed this work after this work was removed from the Carmen.

The burden of proof is forever on the shoulders of the petitioning party in Rules cases. In this case, they have not established the bona fides of their claim. The claim before this Board fails for lack of proof.

AWARD

Claim denied.

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 23rd day of February 1999.