Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14039
Docket No. 13892
10-2-NRAB-00002-090004

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That in violation of the governing Agreement, Rules 76 and Appendix L in particular, the BNSF Railway Company assigned Machinists to perform work contractually assigned to, historically performed by and commonly recognized as work belonging to the Electricians represented by this Organization.

2. That accordingly, the BNSF Railway Company be ordered to compensate Electricians David Reis, Christopher Madsen and Christopher Larsen for any lost wages as a result of any lost work opportunities due to the abolishment of their positions and the reassignment of their duties to the Machinist Craft.

3. That accordingly, the BNSF Railway Company be ordered to return Electricians David Reis, Christopher Madsen and Christopher Larsen to their former electrical craft positions that were arbitrarily and wrongfully abolished."

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 arose when the Claimants, three Mechanical Department Electricians employed by the Carrier in its Glendive, Montana, Mechanical Facility, protested that the Carrier, in January 2007, abolished four positions which previously had been assigned to the Claimants. The Organization asserts that the abolishment of the Electrical positions, and reassignment of work to the Machinist craft, violated the Agreement. The crux of the claim is that because the positions were abolished, the work, which includes locomotive inspections, maintenance, and running repairs, is now performed by employees of another craft.

The Carrier argues first, based on the Organization's procedural error, that the matter should be dismissed. In the alternative, the Carrier alleges that, as a result of changed circumstance, work was reassigned to new positions and, therefore, was not lost; and that the work was incidental, simple, and not craft specific. The Carrier argues it retains the right to utilize the workforce to meet its needs, and that this right allows management the flexibility to create positions where needed based on Shop demands. The Carrier states electrical work in the Diesel Shop had diminished to the point that it required only a few hours per day and electrical work had shifted to the Main Shop to which the positions were transferred.

The Carrier submits that the job descriptions for Electricians remain exactly the same, except for Leadman positions, and that that the Organization did not lose any positions when changes were made. The Carrier asserts that no one was furloughed, that the number of Electrician positions remained constant, and that a like number of positions were posted when job swaps were made. The Carrier states it simply offered new positions where Electricians were needed and, rather

than reassigning employees on a daily basis from one area of the Shop to another, it replaced old jobs with new jobs.

In response to the Carrier, the Organization asserts that the Claimants were bumped to other positions and displaced junior Electricians to the point where a number of previously open electrical positions became occupied, and that the Carrier neither produced new job bulletins nor identified new job assignments. The Organization produced a copy of a job bulletin for one of the abolished positions which describes the position of an Electrician, required to perform Electrician duties, and requires that:

> "SUCCESSFUL BIDDER MUST BE CAPABLE OF HANDLING THE DUTIES ASSIGNED TO THE JOB AND ANY OTHER WORK ASSIGNED IN ACCORDANCE WITH THE AGREEMENT OF THE CRAFT."

On this point, the Organization argues, "And that Craft Agreement is with the Electrical Craft" without further explanation. The Organization further claims that the work neither is incidental nor simple, and alleges that the Carrier's characterization of the work as such somehow violates the Agreement, but offers no specific proof on this point. Finally, the Organization argues that the work was craft specific and specifically bulletined to the electrical craft.

It is challenging to determine some of the facts of this claim because there are three Claimants and allegedly four positions were abolished. In the end, the record does not demonstrate that the Claimants sustained any loss of wages and, while electrical work was transferred to the Main Shop where it was needed, the Claimants retain jobs and continue to perform needed Electrician work.

Although the Organization contends that work performed by Electricians was transferred to Machinists, the Carrier demonstrated that job descriptions for Machinist positions contain the identical maintenance and running repairs language cited by the Organization. The Board finds that the Organization failed to identify precisely what work and how much work allegedly was transferred and failed to present evidence that such work exclusively belongs to IBEW-represented

employees. The Organization presented copies of job bulletins - and nothing more - as evidence of exclusive job preservation.

Prior Awards have held:

> "We have held that a bulletined duty, in and of itself, is not evidence of an exclusive reservation of work." See Third Division Award 15695.
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> "The Board finds that a Bulletin advertising a job creates or establishes no legal obligations. Its purpose is informational rather than contractual. The offer and acceptance of a job advertised in a bulletin is not the equivalent of the offer and acceptance creating a legal contract." See Third Division Award 28226.

On this point, consistent with precedent, the Board finds that the bulletined duty, in and of itself, is not evidence of an exclusive reservation of work to the electrical craft.

Rule 93 - Jurisdiction, provides:

> "Any controversies as to craft jurisdiction arising between the Electricians' Organization and one or more organizations parties signatory to the System Federation No. 7 Agreement effective April 1, 1970 shall first be settled by the contesting organizations, and existing practices shall be continued without penalty until and when the Carrier has been properly notified and has had reasonable opportunity to reach an understanding with the organizations involved."

As discussed in Second Division Award 12223 involving the parties to this dispute, the Board held:

> "We have reviewed carefully the Organization's assertion that Rule 98 (c) protects work previously performed by the petitioning craft . . . The Machinist Craft disputes the Organization's contention that it agreed said work belonged to the Electrical craft and Carrier's technical depiction of this work as falling within the context of the Machinist

> **Classification of Work Rule provides sufficient justification to conclude a legitimate craft stand-off. We find no evidence that crafts attempted to first settle this dispute between themselves. Accordingly, we take no position on the merits of this dispute, and the claim is dismissed."**

In the instant case, the Board finds, based on the record, that the Organization failed to comply with the requirement that craft jurisdiction controversies shall ". . . first be settled by the contesting organizations[.]"

Appendix L of the Agreement, Performance of Incidental Work at Running Repair Work Locations, paragraph 2, provides:

> **"If there is a dispute as to whether . . . work comprises a 'preponderant part' of a work assignment, the carrier may . . . assign the work as it feels it should be assigned . . . however, the Shop Committee may request that the work assignment be timed by the parties to determine whether . . . the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."**

As discussed in Second Division Award 13974 involving the same parties, the Board held:

> **"By not addressing Carrier's contentions that the central repair work normally took only a few hours, and by not complying with the provisions of the Rule requiring that the work be timed in questionable cases, the Organization puts the Board in an untenable posture. It forces a quasi-appellate forum to make findings of facts . . . an exercise beyond our jurisdiction. Similarly, without the time study mandated by the Rule, a process obviously designed to avoid exactly this situation, the Board is compelled to engage in determining disputed facts. With no reliable basis for finding either what was normal repair time or how much time was actually consumed in this instance, the Board must dismiss the Claim for failure of proof and failure to exhaust administrative remedies."**

Again, the Board finds that the record does not reflect that the Organization performed time studies or brought the issue to the Shop Committee as required by the Agreement. The parties have a duty to follow the procedures for resolving disputes as outlined in the Agreement. The Board finds that the Organization failed to do so in this case. Accordingly, the claim must be dismissed.

AWARD

Claim dismissed.

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 28th day of December 2010.