

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20822
Docket Number CL-20715

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7537) that:

1. Carrier violated the Working Agreement with an effective date of March 3, 1970, when, **commencing** on Tuesday, March 13, 1973, and continuing thereafter, it assigned to **employees** of **another** Company (Western Fruit Express Company) at Yardley Yards, Spokane, Washington, work which prior thereto was assigned to and performed by **employees** subject to the Burlington Northern Clerks' Working Agreement.

2. Carrier shall now compensate the senior three (3) extra list **employees** at Yardley Yard Office for eight (8) hours at the pro rata rate of pay **commencing** Tuesday, March 13, 1973, and continuing thereafter until Carrier discontinues this violation of the Clerks' Agreement. On any day there is no extra list **employee** available, the senior available qualified **employee** at the Yardley Yard Office will be allowed the punitive rate of pay.

OPINION OF BOARD: Western Fruit Express, a separate corporate entity, had arranged to have Carrier perform service for it in connection with its **refrigerated** cars. It later made other arrangements and **commenced** performing the service with its **own** employees. This claim is made on behalf of certain BN employees whose positions were abolished **when** Western Fruit Express took its **work** back from BN.

This Board has had occasion to consider the contractual results flowing from a changed **work** situation such as occurred here in other **cases** (Awards No. 6839, 8076, 9762, 9580). The principle that Carrier **cannot** be found in violation of the Agreement when it does not have the right to control the work has been **firmly** established. In the instant **case** Carrier had no option. Western Fruit Express made arrangements to perform the work **which** did not include Carrier's **employees**. Under the circumstances Carrier cannot be found in violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the **whole** record **and** all the evidence, finds and holds:

That the parties waived oral hearing;

That **the Carrier** and the **Employees involved** in this dispute **are** respectively Carrier and **Employees** within the **meaning** of the Railway Labor **Act**, as approved **June 21, 1934**;

That this **Division** of the **Adjustment** Board has **jurisdiction** over the dispute involved herein; and

That the Agreement **was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.