

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 assigned 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.

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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. Parker
Executive Secretary

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