Award No. 4562
Docket No. 4269
2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the provisions of the current agreement the Carrier improperly assigned Maintenance of Way employes to perform the work of repairing motor cars, etc. in the Superior Motor Car Shop on June 15, 1960.

2. And that accordingly, the Carrier be ordered to reassign this work to the Car Department and compensate the claimants for the time this work was performed by employes in the Maintenance of Way Department as claimed in Local Chairman Swanson's letter of July 27, 1960.

EMPLOYES' STATEMENT OF FACTS: At Superior, Wisconsin, a point where the Great Northern Railway Co., hereinafter referred to as the carrier, employs Carman C. Allen, E. Sharp, C. Karwoski, W. Hoff, T. Bachinski, M. Johnson, C. Swanson, R. Riedasch, L. Rudd, W. Tomczak, L. Pearson, T. Flynn, C. Christianson, T. Whitney, C. Schultz, T. Marceski, J. Monberg, J. Zatko, S. Wnek and S. Sawicki, hereinafter referred to as the claimants, the carrier converted the locomotive back shop into a motor car shop, and manned it with employes from the maintenance of way department.

Prior to June 1, 1960 the work of repairing of hand cars, motor cars, lever cars, was performed over the entire system.

After June 1, 1960, the major part of this work was concentrated in the motor car shop at Superior, Wisconsin.

The claimants are requesting that the work performed in the motor car shop, at Superior, Wisconsin, and covered by their agreement, be assigned to them; and further, that they be reimbursed on an actual time worked basis for this violation in rotation starting with C. Allen, from the inception of this claim on June 15, 1960, until the violation is corrected.

of the Carrier. We can only find that there was a violation and direct the payment of penalties as long as the violation continues."

Award No. 7222, B.R.C. v. Erie, Referee Livingston Smith:

"* * * This Board has held on many occasions that it does not possess the power to order a restoration of the position abolished. Awards 1300, 3583 and 3906. * * *"

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. It is the fundamental right of the carrier to have its equipment repaired in whatever manner is necessary or desirable unless the power to make such decisions has been limited by law or some clear and unmistakable language in the collective bargaining agreement.

2. In order to carry its burden of proof in this case, the organization must show that it has secured the exclusive right by agreement and practice to repair maintenance of way motor cars and other roadway equipment.

3. The only contractual evidence submitted by the organization to support its case while handling this claim on the property, was an allegation that the work is covered by Schedule Rule 83 and the paragraph which appears on the cover of the agreement.

4. The language from Rule 83 which the organization contends covers the work in question does not apply to maintenance of way motor cars and other roadway equipment.

5. It has been the practice since the 1920's to have maintenance of way employes repair roadway machines and equipment, and such employes have been covered by the maintenance of way schedule agreement since the 1930's.

6. The cover paragraph also excludes this work from the exclusive jurisdiction of carmen in accord with the holding in Award No. 3778.

7. The organization has admitted that it has never been granted the exclusive right to perform work on roadway machines and equipment by unsuccessfully demanding such rights on at least two occasions.

For the foregoing reasons, the carrier respectfully requests that the claim of the employes be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimants are Carmen employed by the Carrier at Superior, Wisconsin.

On or about June 15, 1960, the Carrier converted the Back Shop facility at Superior to a Motor Car Shop, manning it with Maintenance of Way employes, and thereafter the work of repairing hand cars, motor cars and other roadway maintenance machines and equipment was performed at this facility rather than throughout the entire system as was the previous practice.

It is this work which Claimants are seeking to have assigned to them.

Rule 83, The Carmen's Classification of Work Rule, of the current agreement reads in part as follows:

> "* * * carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; * * *."

If the Claimants are seeking all of the work being performed at this facility, the claim would have to be summarily denied, because their rule, read in strick context, only entitles them to Carmen's work on these items.

The Carmen claimants have failed to sustain the burden of proof which attaches to their claim as made, but we shall further examine the record which discloses that any claim here involved is invalid for other reasons.

The record discloses that the Maintenance of Way employes have performed the work in question on this Carrier since the 1920's. It discloses an agreement between the Carrier and the Maintenance of Way forces, effective December 1, 1936, concerning the work to be performed by them in connection with the type of equipment here involved.

The Scope Rule of the agreement under which Claimants are proceeding reads as follows:

> "It is understood that this agreement shall apply to those who perform the work specified herein in the Maintenance of Equipment Department and all other Departments of this Company wherein work covered by this Agreement is performed, **except where covered by other Agreements on the effective date hereof."** (Emphasis ours).

The Carrier, having by practice and Agreement contracted the disputed work to the Maintenance of Way forces as of the effective date of the controlling agreement here involved, (Sept. 1, 1949), could not, and did not give this work to the Carmen under the latter agreement.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.