

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company, hereinafter referred to as the Carrier, violated the controlling Agreement, when on November 9, 1984, a sheetmetal worker (pipefitter) was assigned to repair a cab door latch on locomotive No. 5138 at Evansville, Indiana Howell Shops.

2. And accordingly, the Carrier should be ordered to compensate Carmen, N. V. Hicks, hereinafter referred to as the Claimant, for two (2) hours and forty (40) minutes pay at overtime rate as the result of said violation.

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 employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

As third party in interest, the Sheet Metal Workers International Association was advised of the pendency of this case, but chose not to file a Submission with the Division.

On November 9, 1984, a Carman was required to repair two door latches on a locomotive. The Carman repaired the first latch but needed a welding machine for the second latch. The locomotive was sent to the roundhouse and a Sheetmetal Worker performed the work.

The Organization argued this assignment of Carman's work to the Sheet-metal Worker's craft was in violation of Rule 104, which states in pertinent part:

"...oxyacetylene, thermit and electric welding on work generally recognized as carman's work; and all other work generally recognized as carman's work."

The Organization also claimed a violation of Rule 30, Section A:

"30(a) None but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at outlying points, as listed below. Where there is not sufficient work to justify a mechanic of each craft, the mechanic, mechanics or foremen employed at such point, so far as capable, may perform the work of any craft that may be necessary."

The Organization claimed this is not a de minimis matter in that work belonging to the Carman's craft was given to another craft and cites two Awards in support of their position.

The Carrier argued Rule 104 does not specifically give the work in question to the Carman's craft, and because of this, the Organization must therefore prove that the work has exclusively and historically been recognized as Carman's work. It is the Organization that bears the burden to prove the essential elements of their Claim.

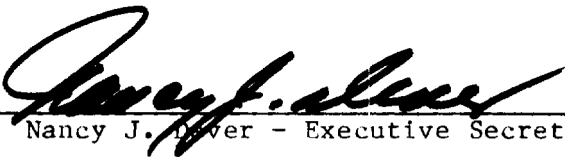
Upon complete review of the evidence, the Board finds that the work in question was not performed on the Seaboard System exclusively by the Carman's craft. The Rules cited do not specifically give the work in question to the Carman's craft. However, this particular location was formerly part of the Louisville and Nashville Railroad System, and both parties stated in their submissions the working rules between the former Louisville and Nashville Employees and the Carrier have continued to the present. It seems clear from a reading of this Docket that no other craft has claimed this particular work and the work was performed on a systemwide basis by the Carman's craft on the Louisville and Nashville Railroad. The Board has required systemwide exclusivity in cases such as this. The question before the Board is what constitutes a system? The work rules and controlling Agreements from the Louisville and Nashville are still in effect. The "system" has not been redefined to include the Seaboard System. The systemwide test has been met. The work in question was improperly assigned to the Sheetmetal Worker's craft. With respect to the monetary amount of the Claim, it seems to the Board to be excessive under the circumstances. Certainly, the Carrier should understand that work belonging to a craft should be assigned to the craft, but there was a Carman on duty who repaired the first latch and this work would not have involved a call-out. The Board finds that compensation in the amount of one hour's pay at straight time is sufficient in this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 11th day of March 1987.

CARRIER MEMBERS' DISSENT
TO
AWARD 11220, DOCKET 11188-T
(Referee Raymond E. McAlpin)

The decision propounded in this Award is an opinion based upon such faulty reasoning that it begs to be labelled sophistry.

In this dispute, a broken Engine Cab Door latch was welded by an employe within the scope of an agreement other than petitioner's.

The Carrier logically defended its action on the following facts:

1. The rule relied upon is silent as to whom Carrier must assign to effect these repairs, and
2. The work has not been recognized as Carmen-Engine Carpenter work.

The Majority correctly reiterated a consistently stated principle of this Board that "...It is the Organization that bears the burden to prove the essential elements of their Claim..." Then, for reasons that defy logic and common sense, it was found that "...the work was performed on a system wide basis by the Carman's craft on the Louisville and Nashville Railroad....The system wide test has been met..."

What the Majority found in this Award that would lead them to find that "...The system wide test has been met..." only they can answer but the only conclusion that the Dissentors can draw is that it was so found because:

1. The Organization repeatedly asserted that this was their work
2. The Craft representing the employe who did this work declined to participate as a Third Party
3. Some eleven employees signed a prepared petition that read:

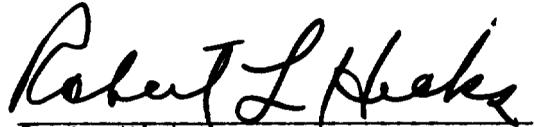
"We the undersigned do hereby attest that Carmen here at Howell have been regularly assigned to repair locomotive cabs, including such work as repairs to cab door latches."

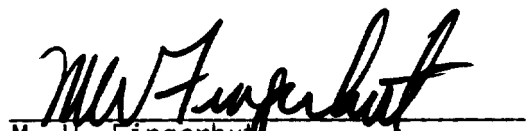
The Louisville and Nashville Railroad consists of some 6,000 miles of track, with some 10 points where engines are serviced and repairs affected as needed. The Petition merely states that "Carmen here at Howell have been regularly assigned to repair locomotive cabs...", not that they have done so to the exclusion of all others, nor is there one single solitary shred of evidence that Carmen have been, to the exclusion of all others, assigned to repair locomotive cabs at any of the other points on the Louisville & Nashville Railroad. This petition does not satisfy the Organization's necessity "...to prove the essential elements of their claim..." and clearly would lead no reasonably prudent individual to the conclusion that "...the work was performed on a systemwide basis by the Carman's craft on the Louisville and Nashville Railroad..." on that evidence.

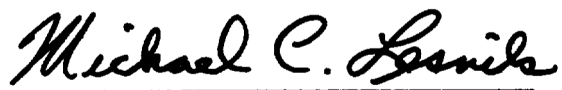
Nor can there be any significance attached to the fact that the Third Party in this dispute, the Sheet Metal Workers, declined to enter this dispute. The only meaningful conclusion that can be drawn from a lack of a Third Party response is that this is not Sheet Metal Workers' work exclusively. Further, it is this Board's responsibility to give full consideration to the Third Party's contractual rights. It should not be assumed that silence is a tacit admission that the work is exclusive to Carmen, yet, apparently, that latter conclusion was reached by the majority in this matter.

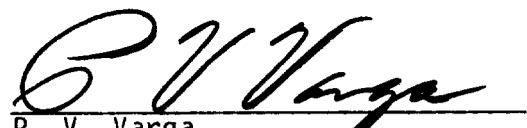
Repeated assertions are no substitute for evidence and do not satisfy the burden of proof prerequisite of the petitioning party.

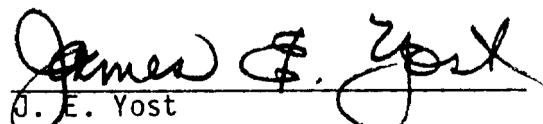
We vigorously dissent.


R. L. Hicks


M. W. Fingerhut


M. C. Lesnik


P. V. Varga


J. E. Yost

