



Award No. 6103
Docket No. 5945
2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement of January 1, 1943 as subsequently amended, between the Virginian Railway Company, and the employees represented by System Federation No. 40, now under the jurisdiction of System Federation No. 16, and past practice of long standing, when on April 11, 1968, two (2) regularly assigned welders on first shift, were taken out of the Shop and off their regular assignments, after beginning their tour of duty and put to work inspecting cars in the train yard, while other employees performed the work of said welders regular assignments on the Shop-Track, thus discriminating against said welders and in effect nullifying their seniority right, to bid on the type of work preferred.

2. That any such extra inspecting as was necessary to be done, should have been done by the Car Inspectors regularly assigned to such work and available and eligible for such work, from the Train Yard extra and overtime-board and that since this was not done, that regularly assigned Car Inspector J. C. Farmer, who was available and eligible for such work, from the Train Yard extra and overtime-board, be allowed eight (8) hours at the punitive rate of pay for said date of April 11, 1968, because of such violation.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk and Western Railway Company (Formerly VGN) hereinafter referred to as the carrier, maintains at Elmore, West Virginia, a point on its line, a shop-track and train yards and the necessary facilities for the repairing, servicing and inspection of cars.

Though there is one common roster for carmen and car inspectors at Elmore, the jobs are advertised, bid and awarded separately. That is to say, that the men who bid in shop jobs are awarded the shop jobs and, those who bid in the yard jobs, are awarded the yard jobs and, in addition thereto

When viewed from its four corners, as it must be, it is obvious that the agreement places only two basic restrictions upon work to be performed by an employee:

1. Rule 29 restricts the employee's seniority to a point or district thereby restricting his work area to that point or district.
2. The classification of work rule for each craft recognizes the type of work to be performed by that craft.

Under given circumstances even these restrictions are liberalized in favor of the carrier.

In Second Division Award 3144, Referee D. E. Whiting, the board held that under similar circumstances:

"Rule 39 (c) does not govern the manner, method or type of service which may be required of an employee, nor alter the prior practice on bulletining jobs and making work assignments. It simply establishes the minimum information necessary on job bulletins. The specification of location must be deemed to conform to the established custom of a fixed point to go on and off duty, rather than as a limitation of the geographical boundaries within which service is to be performed. The latter is not possible because all admit that service must be performed in industry yards and on line of road.

The only service boundaries established by the agreement are the seniority districts, so, it makes no difference whether the specification involved appears on the bulletin or not, the employee can be required to perform service within this seniority district as needed."

In summary, the carrier has shown:

1. The carrier and organization agree on the purpose of the wording of bulletins advertising jobs.
2. The carrier and organization agree on the past practice concerning interchangeability of employees, their duties, and work locations.
3. The agreement provides for the circumstances involved in this dispute and carrier complied with the agreement.
4. There was no violation of the agreement and, in fact, carrier's conduct was in strict conformance with established and accepted practice.
5. Your board has ruled in favor of the carrier in similar circumstances.

The claim is without merit and the carrier requests that it be denied in its entirety.

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 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.

This is a claim that reassignment on April 11, 1968 of two Welders, regularly assigned to work in the Shop, to work on the Shop Track inspecting cars, was in violation of the Agreement, while other welders performed their work, and that the inspecting work done by said Welders should have been done by Car Inspectors drawn from the extra and overtime board. The remedy sought is payment of 8 hours at the punitive rate to the Claimants.

At Elmore, which consists of a Transportation Yard and a Repair Track, Carmen hold point seniority and all Carmen appear on a common roster, and said seniority roster is not broken down by work assignments or location. This roster is the basic document for determining vacation preference, job assignments, furloughing and recall.

Uncontradicted in the record is Carrier's assertion that there exists a practice of many years' standing of reassigning Welders to car inspector work when the Welders can be spared, and when inspection work is greater than can be handled by Car Inspectors.

The Board finds no contractual bar to Carrier's utilization of its manpower by means of such reassignment, which utilization and reassignment are the cause for the Organization's claim.

The Organization contends that 10 (c) and (e) are controlling. The Board concludes that (c) is not applicable because no overtime was worked, or was required to be worked.

10 (e) provides first, that when work needs to be performed which is not part of any assignment it may be assigned to an employe who would otherwise not have 40 hours that week. This part of 10 (e) is clearly not applicable. The second part of 10 (e) provides that if there is work which is not a part of any assignment, and it is not assigned to a man with less than 40 hours, that such work is to be performed "in all other cases by the regular employes."

The Board finds citation of this second part of 10 (e) neither pertinent or controlling, because the work in question was a "part of (an) any assignment." In fact, the work in question was the work of inspecting cars, albeit in a quantity in excess of what could be handled by the carman assigned, and thus was a part of an assignment.

A portion of Supplement 7 to the current Agreement is cited by the Organization in the record as controlling, and as having been violated by the Carrier. Carrier notes that Supplement 7 is confined in its application to Electricians.

The pertinence of Supplement 7, the Board finds, is at best moot, and we see no need to deal with its applicability, if any, to craftsmen other than

Electricians. Nonetheless, it is noted that the portion of Supplement 7 cited by the Organization sets forth a general precept to the effect that mechanics, "may be placed on other work, either in the event of additional help required on such work, or because of lack of work on their own assignments."

The Board is persuaded that such conditions as are referred to above were, in fact, present in Elmore on April 11, 1968, and that contrary to the Organization's contention, the portion of Supplement 7 cited is not a bar to the welder's reassignment, but if anything clearly authorized precisely such reassignment.

The Organization also relied heavily on the following portion of Supplement 7:

While an employe is performing service on such other work, however, other men will not be placed on the work of his assignment.

However, careful and detailed scrutiny of the entire record revealed no evidentiary basis for the allegation that "other men" were "placed on the work" of the reassigned welders.

Finally, because the Organization placed such heavy reliance on it, the Board considered with care the affidavit of 31 employes at Elmore. The Board finds that this affidavit verifies that at Elmore, there is a common seniority list, and that separate overtime records are maintained, as between the Yard and the Shop.

These are uncontested facts in this dispute, and therefore the Board finds this affidavit of little relevance.

In summary, and after review of the whole record and all of the evidence, the Board finds no violation of the Agreement, and perforce finds that the claim advanced must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1971.