Award No. 6118
Docket No. 5970
2-SOO-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. 66, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SOO LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Carrier violated the provisions of the current agreement when they improperly assigned other than carmen to repair ice skids at Shoreham Shops, Minneapolis, Minnesota on January 5, 22, and 23, 1968.

2. That accordingly, Carrier be ordered to compensate Carman H. Wozniak eight (8) hours time and one-half pay each above dates.

EMPLOYES' STATEMENT OF FACTS: On January 5, 22 and 23, 1968, the repairing of ice skids was ordered repaired by B&B carpenters under the protest of the employe, who normally performed the work.

This dispute has been handled with the carrier up to, and including the highest officer so designated by the company with the result that he has declined to adjust same.

The agreement effective January 1, 1954 as it has been subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the action of the carrier in this dispute is contrary to the provisions of the rules of current agreement when B&B carpenters were assigned to work that is spelled out in carman special rules, and especially Rule 94 of the aforementioned agreement, reading in pertinent part as follows:

> "Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flash making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work."

Insofar as the merits of this claim are concerned, it is carrier's position that the work in dispute is not reserved to the craft of carmen by contract, nor is it recognized as theirs exclusively by history, custom, or past practice. To the contrary, it is work that might more properly be considered that of Bridge and Building Department employes.

In the handling of this dispute on the property, the carmen contended that carrier had violated Rules 28 and 94 of the Shop Crafts' Agreement. Rule 28 is a general rule, which stipulates that, "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft . . ." Rule 94, Classification of Work, is the special rule delineating Carmen's work.

Patently Rule 28 has no application if the work in dispute is not reserved exclusively to carmen under the terms of Rule 94.

Not only is there no specific mention of the building, maintenance and repair of ice skids in Rule 94, but the carpentry work outlined therein is subject to the exception of "work generally recognized as bridge and building department work."

On the other hand, Rule 45(c) of the July 1, 1955 Schedule of the Brotherhood of Maintenance of Way Employes, defining B&B mechanics, more aptly encompassed this work. Rule 45(c) reads as follows:

> "An employe assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures (except the iron or steel work), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter and/or mechanic."

Not only do the Maintenance of Way rules provide stronger support for use of B&B men as opposed to carmen, but there is in evidence affidavits by B&B employes attesting to the fact that they have historically built and repaired ice house skids.

Not only is this claim without basis in the rules, but the claim dates are not supported by the facts. The carmen have contended that their rights were allegedly violated account B&B forces repairing ice hour skids at Shoreham on January 5, 22, and 23, 1968. A review of B&B Foreman Hanson's work report for January, 1968, discloses that while Crew No. 92 performed repair work at the ice house on January 2, 3, 4, 5, 8, 12, 13, 22, 23, 24, 25, and 26, 1968, they did not repair skids on the 22nd and 23rd.

This claim is absolutely without merit, and carrier respectfully prays that it be denied accordingly.

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 waived right of appearance at hearing thereon.

This is a claim the Carrier, contrary to the Agreement, assigned the work of repairing Ice Skids on January 5, 22, and 23, 1968, to employes in the Bridge and Building Department.

The organization bases its claim on Rule 94 of the current Agreement, the pertinent portion of which reads as follows:

> "Carmen's work shall consist of building, maintaining, dismantling (except all wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and **bench carpenter work,** pattern and flash making, and **all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department Work.**" (Emphasis ours.)

The question before the Board is whether the Carrier's assignment of Ice Skid repair work in January, 1968, was violative of the Agreement in view of the emphasized portions of the above Rule 94.

The Organization alleges that the work of repairing ice skids falls within: "bench carpenter work" and the phrase "all other carpenter work in shops and yards," and that it therefore does not fall within the compass of "work generally recognized as bridge and building department work."

Carrier asserts that the Ice Skid repair work in contention is work on a skid or ramp which is a permanent installation, one which is connected to an Ice House. Carrier supports its allegation by submission of a sketch (employer's ex parte submission Exhibit A). Carrier further asserts that construction and repair work on ice skids, although in the past might have been done by carmen, has historically been performed by Bridge and Building Department employes, and has submitted signed affidavits to sustain its assertion.

The Board's decision necessarily must be based on and confined to the record before it. Carrier's sketch constitutes persuasive evidence that the ice skids in question are permanent installations, and that therefore Carrier's assignment was proper under the specific exception provided for at the end of Rule 94 above.

The Organization's rebuttal brief contains the following sentence:

> "The drawing, Exhibit A, shows a moveable chute, and also makes reference to, (See Plan 27222, File H-15-e-13, and this could be the ice skid the employe is claiming as being the type of skid that the Carmen have in the past built and/or rebuilt. Furthermore, Carrier never submitted copy of the print so the employe could ascertain as to what type of ramps and skids were in dispute."

From the above quotation from Employes' Rebutal Brief, the Board concludes that the Organization has doubts as to whether, in fact, the ice skids

(work on which they are contending was erroneously assigned by Carrier) referred to by each of the parties on the property are one and the same. It may be that in fact, the issue in dispute was not truly joined on the property.

Be that as it may, the Board's decision must flow from, be grounded on and limited to what is before it, and in the instant case, the Organization's claim must fall, for the reason that it has not supplied, in the record, factual or evidentiary proof to sustain the assertion that the ice skids, work on which it alleges falls within Rule 92, are portable, are non-permanent, or are not connected to the building.

Similarly, the organization has not supplied, in the record, any evidence that the work in dispute has, in fact, historically been performed by Carmen under Rule 92. It is noted that Carrier asserts that such work may have been done by Carmen, but also note that if that were so, it would not constitute such a body of past practice as to have conferred exclusive jurisdiction over such work on Carmen. To the contrary, Carrier submitted affidavits that such work has historically been performed by B&B employes.

Because the record contains probative evidence that repair and construction of ice skids has historically been performed by B&B employes, even though Carmen may also have done it, the Board is persuaded that the work in question is, "work generally recognized as B&B Department work," as provided for in Rule 92 of the Agreement.

Furthermore, the record contains no evidence that the ice skids in controversy are portable. Rather it does contain evidence that the ice skids were permanent installations, connected to the Ice House.

Finally, the Organization has not shown by fact or evidence a past practice of such dimensions as to justify conferring on Carmen exclusive jurisdiction over this work.

For all the preceding reasons, the Board finds that the Carrier did not violate the Agreement in assigning the repair of ice skids to B&B employes, and therefore the claim is 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.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.