

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That under the current Agreement, the Carrier improperly assigned Foreman Don Everetts on January 10, 1975 and R. C. Cox, Foreman, on January 13 and 14, 1975 to the exclusion of Carman Leonard Lehman.
- No. 2. That accordingly the Carrier be ordered to compensate Claimant Lehman for 24 hours at the time and one-half rate for the actual time worked by Foreman Everetts and Foreman Cox on the Willard Car Shop Repair Track.

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.

On January 10, 13 and 14, 1975 the carrier is alleged to have violated the agreement between the carrier and the organization by permitting supervisory personnel to perform work that belongs to the carmen under the agreement. The specific rules alleged to have been violated are rules 29 and 138.

"RULE 29.

"(Rule Established by Labor Board
Effective December 1, 1921.)

"Assignment to Work.

"None but mechanics or apprentices regular employed as such shall do mechanics' work as per special rules of each craft,

"except foremen at points where no mechanics are employed.

"This rule does not prohibit foremen in the exercise of their duties to perform work.

"At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

"RULE 138.

"(Rule Established by Labor Board
Effective December 1, 1921.)

"Classification of Work.

"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 flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

"It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

"It is agreed that the positions of locomotive crane operators in the Stores Department, as well as the wrecking crane engineers, should be classified and take the rate of freight car repairmen, and all such positions would come under the jurisdiction of the Carmen's Organization."

The facts of the case are as follows: Mr. C. D. Everetts was upgraded from carman to foreman status on January 10, 1975. On the claim dates the carman position Mr. Everetts vacated was not filled and the work performed by Everetts as a carman was continued to be performed by him as a supervisor and by another foreman R. C. Cox. The work in question involves checking work and writing up repair bills.

It is the position of the carrier that the work in question is not reserved to the carmen by either agreement or practice. The carrier contends that the work is done by foremen as part of their regular duties. They point out that specific provision is made for this in rule 29 wherein it is stated, "This rule does not prohibit foremen in the exercise of their duties to perform work."

The organization relies primarily on the language of rule 138 which refers to "inspecting" or "inspection" as the basis for their claim. Their allegation is to the effect that, contrary to what the carrier implies in its submission, more than 50% of the work involved relates to inspecting.

On this property the work in question has been assigned by bulletin to both carmen and supervisory personnel. The carrier alleges that at many locations where the work has not been assigned to supervisory personnel by bulletin, i.e., assistant foreman work checker, it has been and is being done by foremen as part of their regular duties. The organization claims that if this is so it is a violation of the agreement.

We are not persuaded that the work in question has been proved to be that of the carmen. The actions of the parties with regard to the work in question far from substantiate the organization's claim to the work on behalf of the carmen. If the work can be assigned to an assistant foreman by bulletin the carmen's claim to the work is tentative at best. The organization has failed to prove its allegation that the work performed by C. D. Everetts as a carman and later performed by supervisory personnel is reserved to the carmen by agreement.

A W A R D

Claim denied.

Award No. 7337
Docket No. 7210
2-B&O-CM-'77

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of July, 1977.