

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. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the Current Agreement, particularly Rules 27 and 47, when they assigned Carmen's work to the Brotherhood of Railway and Air Line Clerk's Laborers.
2. That accordingly the Carrier be ordered to compensate Brainerd, Minnesota Carmen D. L. Benjamin, D. R. Rademacher, D. A. Becker, D. G. Krugen and J. L. Czezok in the amount of three (3) hours each, each work day at the straight time (1) rate plus C.O.L.A. commencing December 30, 1976 and continuing until April 1, 1977.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Brotherhood of Railway and Airline Clerks were served with a Third Party Notice of this dispute and have filed their submission herein.

This claim is based on the alleged improper assignment of Carmen's work to employees of the BRAC Organization in violation of the Agreement between the parties. The Rules cited as being applicable in the instant matter are 27(a) and 47, which read in pertinent part as follows:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shift. ***"

"Locomotives, engines, boilers, tanks, machinery, or other material assigned to scrap may be stripped or scrapped by helpers but useable material will be reclaimed by mechanics; this not to apply to stripping equipment for repairs."

The Carrier first raises the issue of whether this claim was filed within 60 days of the occurrence on which it is based as required by Rule 34(a). The Organization has filed this claim as a continuing claim under Rule 34(d).

The criteria for establishing a continuing claim is well stated in Third Division Award 14450 (Ives):

"Recent awards of this Board consistently have held that the essential distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date. (Award Nos. 12045 and 10532.) Here, the action complained of was the abolishment of the section gang, including the position of Section Foreman, with headquarters at Franklin, Missouri and the assignment of the territory to headquarters in Boonville, Missouri. It is undisputed that the abolishment and transfer of territory by Carrier occurred on or about July 21, 1958. Therefore, we find the Time Limit Rule is applicable as the claim was not filed within sixty days after the date of the occurrence upon which it is based. (Award Nos. 14131 and 12984.)"

This case differs from Award 18667 cited by the Carrier wherein on a date certain the Carrier transferred control of a position of its Pacific Division territory to the jurisdiction and control of employees of another company. The matter complained of in that case was the transfer of jurisdiction. That fell within the definition of a "separate and definitive action which occurs on a particular date". In the instant case we are faced with the continuing assignment of other than Carmen to perform the work claimed. This alleged violation "is repeated on more than one occasion". The claim herein is a continuing claim and is properly before this Board under rule 34(d).

This case must turn on the question of whether the activity complained of includes reclaiming of usable material such as to reserve the work to the Carmen under Rule 47 or is the scrapping of the cars such as would not preclude the Clerks from properly performing the work.

The facts are clear that useable material is being segregated in the process under consideration. While subsequent to the removing and segregation of the useable material the cars are being scrapped, carmen's work must be performed first. Removing of useable parts from the cars falls within the definition of reclaiming useable material under Rule 47.

The Carrier violates the agreement when it permits other than Carmen to segregate the useable material from the cars being scrapped.

Form 1
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Award No. 8281
Docket No. 7847-T
2-BNI-CM-'80

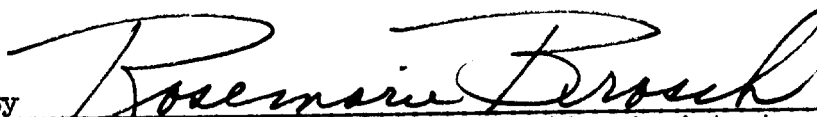
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1980.