

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 117 and 28, when Carmen from another subdivision (Other Carmen) were assigned to perform upholsterer's work on May 18th and 21st, 1979, Houston, Texas.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Upholsterer M. I. Cantu in the amount of twenty hours (20') at time and one-half rate as he was available to perform this work on May 18-21, 1979.

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.

The Claimant in this case, Mr. Cantu, is employed as an Upholsterer. On Friday, May 18, 1979, Carmen L. R. Moreno and Mike Barela, who belong to a seniority subdivision entitled "Other Carmen" were assigned to lay floor covering on Engine 6623.

It is the contention of the Organization that the work of laying floor covering in locomotives is exclusive reserved to the seniority subdivision entitled "Upholsterers". In this connection, they assert the Carrier violated the Agreement, particularly Rule 117 and 28, when it assigned employees from the subdivision "Other Carmen" to perform work belonging to the "Upholsterers" subdivision. The portions of Rule 117 and Rule 28 relied on by the Organization are quoted below:

'Rule 117
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, ***; and all other work generally recognized as carmen's work."

(Emphasis supplied by Organization)

'Rule 28
Seniority

Seniority of employees of each class in a craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided below and in special rules of each craft:

Four sub-divisions of Carmen as follows:

Pattern Makers,

Upholsterers,

Painters,

Other Carmen.

***."

(Emphasis supplied by Organization)

According to the Organization, Rule 117 contracts the work of upholstering to the Carmen's craft and Rule 28 lists Carmen classifications in four subdivisions. By virtue that the upholsterers have a separate seniority subdivision, the Organization contends this is conclusive that "other Carmen" have no seniority rights in the Upholsterers subdivision and that Upholsterers have "preference to work coming within the confines of their subdivision as set out in Rule 117." They argue further that:

"There would be no purpose in identifying upholsterers' work as such as distinguished from other carmen's work in Rule 83 if it were intended that upholsterers did not have prior rights to its performance."

The Carrier takes the position that the work of installing linoleum floors in locomotives is not work exclusively reserved to Upholsterers. The disputed work has been performed at this point by "Other Carmen" since 1955 and at other points such as San Antonio, Texas, LaFayette and Avondale, Louisiana. While they admit Upholsterers have done the work on occasions in the past at the point, the Carrier contends it has not been to the exclusion of other Carmen.

The Board has many times stated the principle to be applied in cases such as this one where an employee claims that he has exclusive right to perform a particular duty. The Organization must show that the work in question is specifically

and exclusively reserved to the employee or employees by virtue of the language of the Agreement or where there is ambiguity in the rules exclusivity must be established on the basis of custom, tradition and past practice.

Applying this principle to the instant case, it cannot be concluded that exclusivity is established by the language of the Agreement. There is great doubt upon a reading of the rules that the laying of flooring is reserved to the upholsterers by virtue of the contract language. Nothing is mentioned in general about the duties that accrue to Upholsterers or in specific as to laying flooring. However, ambiguity in the rules is not a conclusive bar against a claim of exclusivity. As mentioned above, exclusivity can be established by a showing on the basis of past practice. In this regard as well the claim must fail. The Organization has failed to effectively rebut the Carrier's contention that the disputed work is performed by other than Upholsterers at Claimant's point of employment as well as many other points in the Carrier's system.

In view that Rules 117 and 28 cannot be read with reasonable certainty to reserve the work of laying flooring in locomotives and in view that exclusive past practice cannot be established, the claim is denied.

A W A R D

Claim denied.

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 3rd day of June, 1981.