Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9006
SECOND DIVISION Docket No. 8890
2-BRCofC-CM-'82

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Belt Railway Company of Chicago

Dispute: Claim of Employes:

1. That the Belt Railway Company of Chicago violated the current working Agreement specifically Rules 18, 91 and a Letter of Understanding, dated May 21, 1941, as well as the September 25, 1964 Agreement as amended when they contracted with L. W. Troutman (an outside contractor) to perform work of the Carman's Craft.

2. That The Belt Railway Company of Chicago be ordered to compensate Carmen J. Germann, D. Maher, R. Mutzbauer and F. Horn for eight (8) hours each at the pro rata rate of pay for these Agreement violations.

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 dispute centers on the Carrier's use of a private contractor to adjust a load of lumber on Car CN-662179. The Organization claims that the work should have been performed by Carmen under a letter of agreement dated May 21, 1941; Rule 91 (classification of work); and the subcontracting provisions of the September 25, 1964 Agreement (amended December 4, 1975).

The May 21, 1941 Agreement Letter as signed by the Carrier reads in pertinent part, as follows:

> "However, I have canvassed this matter fully with our Transportation and Mechanical Departments and I am willing that this particular work of adjusting loads be assigned in the future to carmen and helpers employed by the Belt Railway Company of Chicago."

Rule 91 does not make specific reference to work on lading. The referenced subcontracting language reads in pertinent part as follows:

> "The work set forth in the classification of work rules of the crafts parties to the Agreement or, in the scope rule if there is no classification of work rules, and all other work historically performed and generally recognized as work of the crafts pursuant to such classification of work rules or scope rules where applicable, will not be contracted except in accordance with the provisions of Section 1 through 4 of this Article II. In determining whether work falls within a scope rule or is historically performed and generally recognized within the meaning of this Article, the practices at the facility involved will govern."

While the Carrier agrees that Carmen have been properly assigned to adjustment of lading, the Carrier also argued without contradiction throughout the dispute procedure that it has also assigned such work on various occasions to outside contractors, as in this instance. The Carrier also argues that the 1941 Agreement Letter is not currently in effect in view of the provision of the Agreement dated September 8, 1959, as amended July 1, 1966, which states:

> "This Agreement, which became effective September 8th, 1950, and as amended, supersedes all previous agreements covering rules, regulations and rates of pay between The Belt Railway Company of Chicago and its employes represented by Organizations signatory hereto and shall remain in effect until changed as cancelled in accordance with the provisions of the Railway Labor Act, as amended."

The Organization argues that the 1941 Agreement Letter is nevertheless currently effective, since, according to the Organization, a number of agreements were inadvertently not included in the 1950 or 1966 Agreements.

Whether or not the 1941 Agreement Letter is in effect, the Board does not find that it grants exclusive jurisdiction of the adjustment of lading to the Carmen, as contrasted with its assignment to outside contractors. Work on lading is not referred to in the detailed Carmen classification of work rule, nor has the Organization demonstrated that such work is "historically performed and generally recognized" as work of the Carmen craft pursuant to the classification of work rule.

The issue here is not which craft employed by the Carrier shall perform the work involved, but rather it is whether or not the Carrier may give it to an outside contractor. Since the Organization has not shown the work as included in its classification of work rule nor that it has exclusively performed the work, the claim must necessarily fall.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of March, 1982.