

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That, in violation of the current agreements, Burlington Northern Inc. improperly assigned other than classified Blacksmiths, namely Maintenance of Way Employees, to the work of welding and building up of frogs and switch points at its new shop located at Galesburg, Illinois.
2. That accordingly, the Carrier be ordered to additionally compensate Blacksmiths J. Martinson, R. Albertson and R. Anderson, and Blacksmith Helper H. Germain for April 6, 1978 and for each date thereafter until the violation is corrected.

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 employees 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 Organization brings this claim, for an unspecified amount of compensation, on behalf of three Blacksmiths and one Blacksmith Helper stationed at the Carrier's reclamation plant at Brainerd, Minnesota. The Organization contends that sometime in late 1977 or early 1978, the Carrier began to improperly assign work consisting of the building up and welding of frogs and switch points to workers represented by the Maintenance of Way Employees at a Galesburg, Illinois facility. The Organization raised this claim on the property on June 6, 1978 as a continuing claim under Rule 34(d).

The Carrier raises a threshold objection to this claim by contenting the claim is untimely under Rule 34(b) since the claim was instituted more than sixty days after the Carrier ostensibly began to assign Blacksmiths' work to other employees. We must overrule the objection because this claim covers repeated occurrences of the same violation. The claim alleges the Carrier violated the contract each time the Carrier assigned the Maintenance of Way employees to build up frogs or switch points which would have usually been sent to Brainerd. Thus, the Organization's claim concerns a continuing breach of the labor contract under

Rule 34(d). Second Division Award No. 8542 (Roukis). However, Rule 34(d) clearly limits any monetary recovery by the Organization to sixty days prior to June 6, 1978.

On the merits, the Organization cites Rule 64 of the April 1, 1970 Agreement which states, in part:

"Blacksmiths' work shall consist of ... welding or building up of frogs, switch points, cross overs, puzzle switches and low rail joints when done in Maintenance of Equipment shops ... and all other work generally recognized as blacksmith work." (Emphasis added.)

For factual support of its claim, the Organization relies on a newsletter issued by the Carrier and the historical practice on the former Chicago, Burlington & Quincy ("C, B & Q") as well as the established practice since the 1970 merger.

An article in the Fall-Winter 1977 Edition of the Carrier's Chicago Region Newsletter related, in detail, the work performed by four Maintenance of Way employees at Galesburg. In the article, the Carrier's Regional Engineer-Maintenance said:

"Galesburg is also quite central to the Chicago Region, so we chose it as the location for trying a new concept in repairing frogs and switches.

...

Prior to this year, when these items became too worn to continue using, we took the old ones out, put new or rebuilt ones in place, and sent the old ones to Brainerd, Minn. There, they were either repaired or scrapped."

According to the Organization, the Carrier's newsletter conclusively demonstrates that the Claimants were deprived of work since frogs and switches which would have been rebuilt at Brainerd were now built up at Galesburg. The newsletter article also stated that new jigs were installed at Galesburg and the Maintenance of Way welders were provided with, "... highly refined training..." Therefore, the Organization alleges that the Galesburg Maintenance of Way employees were learning new work which was outside their traditional jurisdiction of welding frogs and switch points in the yards or along the rail line. Lastly, the Organization maintains it attained system wide exclusivity over the disputed work on the merged system after the Carrier closed its Eola and South Tacoma Plants. The frog and switch point work formerly performed at those locations was transferred to Brainerd.

The Carrier, on the merits, defends the claim by construing the newsletter article in a different fashion. According to the Carrier, there was an improvement in the working conditions for the Maintenance of Way employees but they had been performing the same work at the Galesburg facility that they previously performed outside the shop. The Carrier's primary defense is that, regardless of the type of work the Maintenance of Way employees perform, the Galesburg facility is not a "Maintenance of Equipment shop" within the meaning of Rule 64.

The Maintenance of Way Organization has filed a third party submission contesting the Claimants' right to perform the disputed work. The Maintenance of Way employees argue that the four welders at Galesburg have exclusive jurisdiction over the work pursuant to past practice on the former C, B & Q system and under Rule 55 of the current labor agreement in effect between the Carrier and the Maintenance of Way employees.

The primary issue in this case is whether or not the Galesburg facility is a Maintenance of Equipment shop within the meaning of Rule 64. The parties have exhaustively presented their respective positions on this issue. We attach little weight to the label given the shop, or to the nature of the department which runs the shop. Rather we must determine the type of shop based on the function it serves. While the question is close, we rule that the Carrier's newsletter shows that the Galesburg facility is best characterized as a Maintenance of Equipment shop.

Some of the work performed at Galesburg, as the Carrier rightly points out, is precisely the same work the Maintenance of Way employees previously performed outside. However, part of the work is new. The introduction of the new work, i.e., the building up of frogs and switch points at Galesburg which would have been sent to Brainerd, constitutes a violation of Rule 64. The Carrier could properly improve the welders' working conditions at Galesburg (including giving them a room in the shop). However, the Carrier deprived Blacksmiths of work expressly reserved to them under Rule 64 when it assigned the welders to build up frogs and switch points which formerly would have been sent to Brainerd. Rule 55 of the Maintenance of Way agreement does not precisely cover the disputed work since Rule 55 refers only to welding frogs and switch points while the Blacksmiths classification of work rule refers to both the welding and building up of frogs and switch points (provided the work is performed in a Maintenance of Equipment Shop).

Though we have concluded that the Carrier violated Rule 64, the Organization has failed in its Statement of the Claim to specify any remedy. This Board cannot speculate on how many frogs and switch points which would have been sent to Brainerd were, instead, built up at Galesburg. Since the Organization has not incorporated any proof regarding the amount, if any, of compensation due the Claimants, we are precluded from awarding any monetary relief. Because there was a contract violation, we will sustain the claim but without any compensatory award.

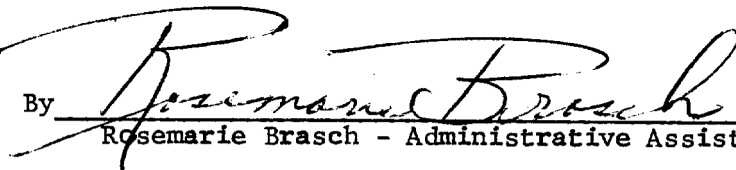
A W A R D

Claim sustained to the extent consistent with our findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.