CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9117
Docket No. 8392-T
2-SCL-CM-'82

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

(1) That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when on March 3, 1977, March 8, 1977 and March 16, 1977, a company officer (foreman), did perform Carmen's work which violated Rules 26 and 100 of our current agreement and in so doing deprived Carmen P. W. Eure, E. H. Smith and V. E. Smith of their rightful work.

(2) That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate the Carmen named above, two (2) hours and forty (40) minutes each at the overtime rate of pay which is a minimum call.

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 March 3, 8 and 16, 1977, Carrier Supervisor N. E. King, Sr. operated a mobile crane to install wheels in three separate freight cars at Carrier's Portsmouth, Virginia facility. On the days in question in this claim, Claimants, who are Carmen, were each first out on the overtime board. They allege that they should have been called to operate the crane instead of allowing the Supervisor to do so. The Organization alleges that, by allowing the Supervisor to operate the crane, Carrier violated the Overtime Agreement. The Organization charges that Rules 26 and 100 were violated.

Rule 26 reads in pertinent part as follows:

"RULE 26 - ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

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

The Organization contends that when the Supervisor operated the crane on the three days in question, he was in violation of Rule 26, Paragraph (a). He was actually doing Mechanics' work and that is not allowed at points where Carmen are employed.

Carrier contends that the Supervisor was teaching the Carmen working with him how to operate the crane. Under Rule 26, Paragraph (b), he has the right to do so.

It is well established that Supervisors have the right to perform Mechanics' work while instructing employes in proper procedures or when assistance for instruction purposes is requested by employes. This Board has so stated in numerous awards.
(See for example Second Division Award No. 8072, A. Weiss.)

A review of the record of this case, however, does not substantiate Carrier's position that the Supervisor was teaching the Carmen working with him how to operate the crane. While the record does reveal that the two Carmen working on the days in question could not operate the crane, that fact does not justify the Supervisor stepping in and operating the crane just to get the work done. Nothing in this record, other than Carrier's own statement, supports Carrier's position that the Supervisor was teaching or instructing the Carmen involved in the operation of the crane. The record reveals that the Carmen were handling the wheels and placing them on the truck and guiding them into the truck frame. They were engaged in their own work and were not watching the Foreman operate the crane.

This Board does not consider what took place in this instance to be an example of a Foreman performing a Mechanic's work in his role as a Supervisor or as an instructor of the men. We will therefore sustain this claim.

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A W A R D

The claim is sustained.

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 16th day of June, 1982.

DISSENT OF CARRIER MEMBERS
TO
AWARD 9117, DOCKET 8392
(Referee Dennis)

The Majority, in sustaining the claim, made the following eregious statement:

> "Nothing in this record, other than Carrier's own statement, supports Carrier's position that the Supervisor was teaching or instructing the Carmen involved in the operation of the crane."

What the Majority conveniently failed to mention was certain unrefuted facts, namely, that the two carmen asked the Supervisor to assist them in the operation of the crane and that following instruction by and as a direct result of the instruction of the Supervisor on the claim dates, one carman was in fact qualified in the operation of the crane and the other carman would have been qualified but went out on an extended leave. What further proof could possibly be offered to establish that the Supervisor's operation of the crane was for the purpose of instruction. It must be re-emphasized that this was not a mere assertion by the Carrier, as the Majority would infer, but rather a fact of record which was never denied by the Organization.

This Board has held in a myriad of Awards that the burden of proving a claim rests with the party asserting it and that it is the responsibility of the moving party to prove all the essential elements of its claim. It was incumbent upon the Employees in this case to establish by probative evidence that the Supervisor's operation of the crane was solely for production purposes rather than for instructional purposes as was proven by the Carrier. This the Employees failed to do. The Majority, however, overlooked this fatal defect in the Employees' handling of the case, and ruled, without a scintilla of evidence, that the Carrier failed to establish that the Supervisor was instructing the two carmen.

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The Majority seems to place its greatest reliance on the erroneous assumption that during the entire period of claim, the two carmen were engaged in their own work and were unable to observe the Foreman operate the crane. If this were the case, the two carmen involved must have learned the operation of the crane through osmosis, since, as hereinbefore noted, they became qualified on the operation of the crane following the claim dates.

While the Majority professes knowledge of the well-established principle that Supervisors have the right to instruct employees in the performance of their duties and that an integral part of such duties must, perforce, include hands on the performance as well as verbal instructions (see Award 8072-Weiss), it is evident that they failed to follow this well-reasoned principle in arriving at their decision.

Hence, we dissent:

J. M. Fagnani

D. M. Lefkow

J. E. Mason

J. R. O'Connell

P. V. Varga