

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 9449
Docket No. 9247-T
2-SOO-CM-'83

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United States
and Canada
{ Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 27, 28 and 94 of the controlling agreement, on or about October 18, 1979, when they assigned A Blacksmith Welder to Carmens' work to set up and weld 250 lock assemblies for the Soo Line L. O. Hopper cars at Fond du Lac, Wisconsin.
2. That the Soo Line Railroad Company be ordered to compensate Carman M. O'Neil and G. Stenz, 8 hours each at time and one half at Carmens' Welders rate of pay for Soo Line R.R. violation of Rules.

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 Organization contends that Carrier violated Rules 27, 28 and 94 of the controlling Agreement when it assigned a Blacksmith Welder to set up and weld 250 lock assemblies for the L.O. Hopper cars at Fond du Lac, Wisconsin on or about October 18, 1979. It argues that Carmen have historically built and repaired cars and welded parts thereto and asserts that Claimants have welded this type of lock on an as needed basis. It avers that the Blacksmiths' craft has not established work exclusivity and asserts that several occasions Blacksmiths did perform such work, does not overrule the clear language of Rule 94, which sets forth that building and maintaining freight cars accrues to the Carmen. It notes that Rule 69, the Blacksmiths' classification of work rule does not refer to work pertaining to building and maintaining freight cars and concludes that this exclusion affirms its position.

Carrier contends that the Organization's classification of work rule does not exclusively reserve such work to the Carmen and asserts that petitioners have not submitted evidence persuasively showing that Carmen traditionally and solely performed the work of welding lock assemblies. It argues that the Organization cannot prove that its members singularly performed this work on

a system wide basis, the evidentiary gravamen of a past practice assertion, and thus the grievance lacks the needed specificity and historical consistency to establish a bona fide exclusivity claim.

The Blacksmiths' craft as an interested party to these proceedings has also asserted that the Carmen cannot contractually or historically demonstrate work exclusivity and argues that the contested work belongs to its members.

In our review of this case, we find it exceedingly difficult to determine whether the work of welding lock assemblies exclusively belongs to the petitioning Organization or the Blacksmiths. Both crafts claim this work and both have minimally shown that members of their craft perform this work. We find no indisputable language in either of the craft's classification of work rules that would unmistakably and categorically assign such work to either craft, nor a compelling demonstration of a system wide practice. The evidence of record lacks the consistent specificity required by our Board to establish judicially a clear finding of work exclusivity and without sufficient evidence to base a determination, we are constrained to deny the claim. The Board has no solid probative evidence to ascertain properly the jurisdictional issue herein. (For controlling authorities on this point, See Second Division Awards No. 8430 and 7995 and Third Division Awards No. 11526 and 14284).

A W A R D

Claim denied.

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 20th day of April, 1983.