Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9722
SECOND DIVISION Docket No. 9239-T
2-CMSP&P-EW-'83

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it improperly assigned Blacksmith Alex Ransaw and Carmen Archie Williams, Eugene Braun, and Ed Borkowski to operate electric cranes in the Freight Car Shop at Milwaukee Shops during the period from May 14, 1979 thru June 19, 1979. The work herein claimed should have been properly assigned to Electrician Helper Kenneth Morrow.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate the Claimant at the Electric Crane Operator's rate at eight hours per day for the twenty three days on which the Carrier violated the Agreement. The herein mentioned violation occurred on the following dates:

Blacksmith Alex Ransaw: May 14, 15, 16, 17, and 18, 1979.
Carman Archie Williams: May 21 and 22, 1979.
Carman Eugene Braun: May 29, 30, and 31, 1979
& June 1, 4, 5, 6, 7, 8, 11, 12,
13, 14, and 15, 1979.
Carman Ed Borkowski: June 18 and 19, 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 employes 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.

At the time this claim arose, Claimant, K. Morrow, held seniority as an Electrician Helper - Crane Operator at Carrier's facilities in Milwaukee, Wisconsin. On twenty-three days during the period May and June of 1979, Carrier assigned one Blacksmith and three Carmen, who are not represented by the Organization, to operate the overhead crane on the north end of Tracks One and Two in the Freight Car Shop.

As a result of Carrier's actions, the Organization filed this claim. In it the Organization alleges that Carrier violated Rule 72 of the Agreement as well as a Memorandum of Agreement dated January 1, 1961 when it failed to assign the Claimant to operate the overhead crane on the days in question.

Rule 72 and the Memorandum read, in relevant part:

Rule 72 - Classification of Lineman

"Men employed as generator attendants, motor attendants (not including water service motors) and substation attendants, who start, stop, oil, and keep their equipment clean and change and adjust brushes for the proper running of their equipment: power switchboard operators, cool-pier car dumpers and cool-pier conveyor car operators in connection with loading and unloading vessels.

"This is to include operators of electric traveling cranes, capacity 40 tons and over."

Memorandum of Agreement - January 1, 1961

"1. The names of employes carried on the Milwaukee Shops Electric Crane Operators Seniority Roster as of December 31, 1960, will be added to the bottom of the Milwaukee Shops Electrician Helpers Seniority Roster in the same order in which their names appear on the Electric Crane Operators Seniority Roster and will be given an arbitrary seniority date of January 1, 1961 on the Electricians Helpers Seniority Roster."

"4. Failure of the senior qualified employe on furlough in both classifications to respond for an unfilled new position or vacancy in either classification will cause forfeiture of seniority rights in both classifications."

The Organization contends that Rule 72 and the above Memorandum mandate that all Crane Operator assignments be performed by Electricians. The Organization notes, that at the time the work in question was assigned to a Blacksmith and Carmen, Claimant had been furloughed as a Crane Operator. Furthermore, the Memorandum of Agreement clearly requires that all Crane Operators will be added to the Electrician Helpers Seniority Roster. In the Organization's view, Claimant was, thus, entitled to any Crane Operator assignment which arose during the time of his furlough.

In addition, the Organization argues that members of its craft have traditionally operated cranes for many years. In fact, the Organization points out that in 1980 Carrier improperly attempted to assign a Carman to the duties of a Crane Operator. When Carrier was advised of its error, it rectified the situation by assigning an Electrician to the position of Freight Shop Crane Opeator. Thus, the Organization concludes that Carrier has acknowledged that the operation of cranes belongs to its craft. Accordingly, the Organization asks that the claim be sustained and that the Claimant be appropriately compensated.

Carrier, on the other hand, asserts that neither Rule 72 nor the Memorandum of Agreement apply to the facts of this case. Carrier argues that Rule 72 relates only to the operation of electric traveling cranes whose capacity is forty tons or more. Here, Carrier points out, the Blacksmith and Carmen were assigned to cranes whose capacity was less than forty tons. Thus, Carrier contends that there is no Rule in the Agreement which specifically requires that Electricians perform the work in question.

In addition, Carrier maintains that it has often assigned Carmen or Blacksmiths to operate cranes when Electricians Helpers - Crane Operators were not available. While the Claimant had been furloughed as a Crane Operator he had been recalled as an Electrician Helper. Thus, in Carrier's view, Claimant was not available to perform the duties of a Crane Operator during May and June 1979. Therefore, Carrier concludes that the practice on the property supports its position. Accordingly, it asks that the claim be denied.

This dispute centers on the applicability of Rule 72 to this case. If Rule 72 applies, then the Organization need not prove the existence of an exclusive past practice with respect to the work in question. However, it is clear that Rule 72 is inapplicable to the facts of this claim. Rule 72 by its very terms includes "operators of travelling cranes, capacity 40 tons and over". The record evidence indicates that the crane(s) in question had a capacity of under forty tons. Whether they were in all other respects identical to the larger capacity cranes is irrelevant. The language of the Rule is clear and unambiguous. It applies only to the larger capacity cranes and not to the ones which are the subject of this dispute.

In addition, the Memorandum of Agreement makes no reference to the duties of a Crane Operator covered by its terms. It merely lists the procedures by which those employees carried on the Crane Operators Seniority Roster will be incorporated into the Electrician Helpers Seniority Roster. As such, it does not support the Organization's position here.

Accordingly, in order to prevail, the Organization must prove that the operation of cranes belongs exclusively, on a system-wide basis, to members of its craft. It has not met this burden of proof here. The record reveals that Carrier has assigned Carmen to perform the work of Crane Operators when Electrician Helpers/Crane Operators were not available. Here, Claimant was regularly assigned as an Electrician Helper during May and June of 1979. Thus, he was not available to perform Crane Operator work during that same period of time. As such, the Organization has not proven that members of its craft have <u>exclusively</u> performed the disputed work.

Finally, we note that the Organization's reliance on various cited Awards is misplaced. Simply stated, they apply to situations where either by Agreement or practice the employees had exclusively performed the work at issue at the location in question. As noted above, the record reveals no such practice nor Agreement support. Accordingly, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1983.