

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated the provisions of the current controlling Agreement when they assigned other than Carmen to perform Carmen's work at the Consolidated Freight Car Shops, Springfield, Missouri.
2. That accordingly, the Burlington Northern, Inc. be ordered to compensate Carman L. G. Stokes four (4) hours at the Carman Welder's straight time rate for March 10, 1981 and four (4) hours at the Carman Welder's straight time rate for March 17, 1981.
3. That this violation not be repeated.

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.

The Brotherhood contends that Carman L. G. Stokes was employed by the Carrier and available to perform the work described as follows:

"On March 10 and March 17, 1981, the Carrier violated the provisions of the current controlling agreement when carrier officer instructed and allowed other than carmen to perform carmen's work. On March 10, 1981, a laborer was instructed to supply carmen with a #18 unit type brake beam for repair to SLSF 87768. On March 17, 1981, Carrier officer instructed laborer to supply two unit type brake beams for repairs to SLSF 10034."

The record demonstrates that there have been jurisdictional differences between the Carmen and Firemen and Oilers for many years over such work as described in this claim. The Carmen endeavored without success to get from the Firemen and Oilers organization a clearance reserving to Carmen exclusive right to the work in question. Rule 51 of the applicable labor agreement specifies that in the event of a jurisdictional dispute the craft performing the work shall continue to do so until the dispute is settled by the crafts involved. The rule also provides that where an allocation of work cannot be agreed upon in conference between the carrier and the union the carrier may require the work to be performed by the craft they consider entitled to the work.

The jurisdictional dispute was the subject of a letter agreement signed on September 26, 1977, between R. L. Coulter, General Superintendent, Car Department, and W. S. Merrill, General Chairman of the Brotherhood of Railway Carmen. The circumstances of the agreement were described in the Carmen Submission as follows:

"The Carrier has on several occasions used laborers to perform carmen's work. Claims have been progressed and conferences have been held. As far back as September 22, 1977, a conference was held with then General Superintendent, Car Department, R. L. Coulter, and as a result of that conference, a letter to this Organization was sent out on September 26, 1977 and is hereto attached as Exhibit 'F' and a portion of that letter reads as follows.

'Dear Mr. Merrill:

'This will confirm conference held in my office at 1:30 PM, Thursday, September 22, 1977, in connection with the contents of former General Chairman C. L. Mann's letter June 9, 1977 concerning Firemen and Oilers group allegedly performing work that contractually belongs to the carmen.

In conference it was agreed that the work in the sandblasting area (sandblasting of cars) would continue to be done by carman helpers as long as they are available, and that in the event the carman helpers' roster is depleted, a carman and/or an apprentice if necessary would be assigned to perform this work.

It was further agreed that on the 4:00 PM shift we would add one carman apprentice to assist in the supplying of car parts for the various car building programs and that members of the Firemen and Oilers group would be used only in the stockpiling of material. (Underscoring added.)"

The letter agreement testifies as to the longstanding jurisdictional dispute and confirms that the Carmen have not had exclusive right to the work as claimed. Provision that members of the Firemen and Oilers craft would be used only on the 4:00 P.M. shift to stockpile materials leaves for speculation as to who performed such work on the other shifts.

In consideration of this claim as it relates to the on-going jurisdictional dispute, the Firemen and Oilers' Organization was requested to provide a statement of position. Such statement was issued by Wm. B. Hayes, General Chairman of System Council District #11, IBFO, as follows:

"It is the position of the International Brotherhood of Firemen and Oilers that the work of supplying parts and material to mechanics of various crafts is and has been considered work falling within the jurisdiction of our brotherhood. Indeed Rule 2 of the Agreement effective July 1, 1979, between the St. Louis-San Francisco Railway Company and System Federation No. 22 covering employees represented by the Firemen and Oilers, which relates to job classification, shows the title 'Supplyman' in Group C. Additionally, the title, 'Shop Vehicle Operator' is contained in Group C. Surely a forklift is considered a shop vehicle. Accordingly, the work was properly assigned.

"We submit that historically and customarily work of this nature has always been performed by members of the Firemen and Oilers craft. In Second Division Award No. 7487, BN-Carmen, with Referee Theodore H. O'Brien as a Member, the Board held that 'the claiming party must show an exclusive system wide practice on the former component railroad, prior to the merger.'

Again in Second Division Award No. 8442, BN-Machinists, with Referee George S. Roukis, the Board repeated that principle.

We do not believe the Carmen's organization has demonstrated such exclusivity prior to the merger in the instant case."

The Carrier, in disputing the claim, contends it should be dismissed because of not being presented to the proper officer of the Carrier. Examination of the record shows there was considerable confusion on the part of Brotherhood representatives as to the proper officers to be addressed in matters of this kind. Whether the confusion was due to Carrier failure to keep the Brotherhood representatives fully informed is not clear.

There is also some confusion in the record as to the circumstances of the claim. For example, the Brotherhood contends that on March 10, 1981, a laborer was instructed to supply a brake beam for repair on SLSF 87768. The Carrier, contends, however, that it has no record of a laborer being so instructed. Moreover, Carrier states that on that date Claimant Stokes was employed as a laborer thus casting doubt as to the validity of a claim in his name for pay at the carman welder rate. It is also noted the Brotherhood contends that on March 17, a Carrier officer instructed a laborer to supply two brake beams to SLSF 10034. In defending against this allegation the Carrier points out that on March 17 the car was in the paint shop. Since car work is not performed in the paint shop the Carrier challenges that a laborer was so instructed. In elaborating on these discrepancies the Carrier contends that the facts were not fully developed on the property due to the Brotherhood's failure to address its claim to the proper officials.

The Brotherhood contends that the Carrier violated Rules 7, 27, 30, 31, 114, 116 and 117. Although most of these rules were referred to only by number the Brotherhood did quote the specific language of Rules 31 and 113 and commented as their applicability to the claim as follows:

"The contract language contained in Rules 115, 116 and 117 clearly states that the work claimed contractually belongs to carmen. Rule 115 reads in pertinent part:

'Rule 115. Carmen's work shall consist of building, maintaining, dismantling, painting upholstering and inspecting all passenger and freight cars, . . . joint car inspectors, car inspectors, safety appliances, and train car repairers; . . . and all other work generally recognized as carmen's work.'

Your attention is also directed to Rule 31, reading in pertinent part:

'Rule 31. (a) Except as otherwise provided by the rules of this agreement, none but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employes.'

The one and only exception, for other than carmen to perform carmen's work, does not apply in this instant matter, leaving only carmen to perform carmen's work. Rule 116 reads as follows:

'Rule 116. Include regular and helper apprentices in connection with the work as defined in Rule 115.'"

Examination of the rules shows that the work of building, maintaining, dismantling, painting, upholstering and inspecting passenger and freight cars is reserved to carmen and their apprentices. The rules do not, however, contain any provisions reserving to this craft the work of delivering parts for such repair and maintenance work.

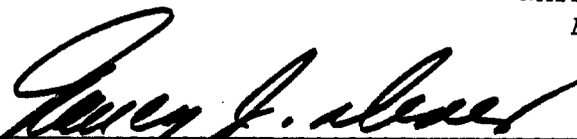
In conclusion, the continuing jurisdictional dispute between the two Brotherhoods confirms that carmen have not established exclusive jurisdiction over the particular work covered by the claim. Because of the unresolved jurisdictional differences the Carrier has the right under Rule 51 to continue to require the work to be performed by the craft they consider entitled to the work. Moreover, the record is deficient in that circumstances surrounding the particular work covered by the claim because of unresolved inconsistencies in the respective statements of the parties. Finally, the particular rules cited by the Brotherhood do not contain clear and specific language reserving to the carmen craft the work described in the claim. In view of these conclusions it cannot be determined the rules were violated by the Carrier as alleged.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1984.