

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10091
Docket No. 9884
2-BN-CM-'84

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 D. L. Dicus eight (8) hours at the carman welders straight time rate.

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 circumstances involved in the claim are set forth in the Brotherhood's submission as follows:

"...Claimant was available and qualified to perform the work herein described on April 2, 1981. The Carrier violated the current controlling agreement when Carrier officer assigned other than carmen to perform carmen's work of supplying parts and materials to carmen. Laborers (Firemen & Oilers) were improperly assigned to perform carmen's work. The Carrier assigned a laborer to supply carmen with a #24 unit type brake beam and 4, 6 1/2 x 12" roller bearing adaptors. These materials were needed by carmen to repair a SLSF81302 box car. This occurred at approximately 11:40 a.m. At approximately 12:38 p.m., Carrier officer instructed laborer to supply carmen with two #24 unit type brake beams to repair SLSF8817. At approximately 1:45 p.m., Carrier officer instructed laborer to supply carmen with one uncoupling lever, one uncoupling lever bracket, one 87000 series hopper door and three 87000 series hopper door

"spreaders. Contractually and historically, the supplying of parts and materials to carmen has been performed by carmen. The Carrier at present has assigned by bulletin, two journeyman carmen assigned to supply carmen. Even with the bulletined jobs, carmen supply themselves when possible with parts and materials. Firemen & Oilers do not have any contractual rights to build, repair or maintain rail freight cars or passenger cars in any manner. Nor do they have contractual rights to assist carmen in the performance of their work."

The brake beams, roller bearing adapters and hopper doors were carried by forklifts operated by laborers represented by the Firemen and Oilers organization.

The record shows that jurisdictional differences have existed between the Carmen and Firemen and Oilers organizations for many years over work such as covered by this claim. The Carmen endeavored without success to secure from the Firemen and Oilers Brotherhood a clearance reserving to carmen exclusive right to the work in question.

In consideration of this claim as it relates to the jurisdictional differences between the two brotherhoods, the Firemen and Oilers organization was notified and requested to supply a statement of its position. Such statement was supplied by Wm. B. Hayes, General Chairman, System Council #11 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 classifications, 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 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."

Rule 51 of the Agreement governing the handling of jurisdictional disputes provides that management may require the work to be performed by the craft it considers entitled to the work and that such craft shall continue to do the work until the dispute is settled by the crafts involved.

In supporting argument the Carmen's Brotherhood concedes that while members of the Firemen and Oilers craft operate fork lifts and stockpile materials for their own jobs this does not give Carrier the option to use them to supply Carmen materials from the stockpile. The Brotherhood contends that Firemen and Oilers do not have exclusive rights to operate such equipment but also concedes that Carmen do not have exclusive right to operate such equipment.

The Brotherhood contends that in assigning laborers to supply parts and materials to Carmen it violated the following rules of the agreement:

- Rule 7--Overtime, Meal Period, Calls
- Rule 27--Reduction in Forces
- Rule 30--Seniority
- Rule 31(a)--Assignment of Work
- Rule 114--Qualifications
- Rule 115--Carmen's Classification of Work Rule
- Rule 116--Carmen Apprentices
- Rule 117--Carmen Helpers

The above rules do not contain any plain language which reserves to Carmen, their helpers or apprentices the exclusive right to carry materials. Essentially, the rules provide that the work of Carmen consists of "building, maintaining, dismantling, painting, upholstering and inspecting all passenger and freight cars...". Language reserving to the Carmen's craft exclusive rights to such work are detailed but nowhere in these rules is the matter of carrying materials reserved to their craft. If the work of supplying parts and materials was intended to be reserved exclusively to the Carmen's craft the rules would so state in the same way they delineate the work reserved to Carmen in the repair and maintenance of cars. The record shows that Carmen at Springfield have been referred to in bulletins on supplying materials. But the record also shows that while Carmen craft perform such work it is also performed by other crafts such as clerks and laborers, the point being that neither the rules nor practices at Springfield support a conclusion that Carmen have exclusive right to such work.

There are many prior awards wherein the Board has held that the assignment of work to one craft does not reserve to the craft exclusive right to such work. Thus in Award 7031 Referee Carter stated:

"... Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. ..."

While that Claimant has not cited any rules specifically supporting its claim to the work the IBFO referred to provisions in their Agreement for job titles of Supplyman and Vehicle Operator. The record shows that by practice at Springfield both crafts are used to supply parts and materials thus confirming that neither craft has the exclusive right to such work. The Carmen's Union asserts that at other points members of the Carmen craft perform this work. This assertion, however, is not accompanied by corroborating data and thus must be considered lacking necessary supporting evidence.

Second Division Award 9062 by Referee LaRocco dealt with the same problems which exist in this case. His comments on the exclusivity issue follows:

"...Numerous decisions of this Board have ruled that in order to establish exclusive rights to work which is not expressly reserved to the Organization in a classification of work rule, the Organization has the burden of proving, by past practice, that the work traditionally and exclusively belongs to carmen on a systemwide basis. Second Division Awards No. 5316 (Johnson) and No. 7295 (Twomey). ..."

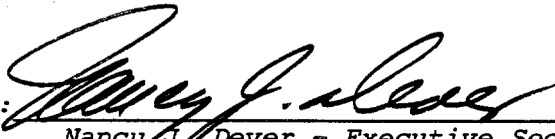
Inasmuch as the Claimant Organization has neither shown support for the claim by specific language in the rules nor general practice the claim cannot be sustained.

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 19th day of September 1984.