

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad has violated the terms of the controlling Agreement, specifically Rule 83, when they allowed laborers at the West Burlington Shop to wash locomotive units on the first shift while same work is being performed by Carmen on the second shift on May 23, 1980.
2. That the Burlington Northern Railroad be ordered to additionally compensate Carmen R. E. Blazer, L. Booten, J. L. Sims, B. Chapman, P. A. Modrano and J. L. Campbell in the amount of two (2) hours at the pro-rata rate for service claimed on May 23, 1980.

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 Organization contends that Carrier violated Rule 83 of the Controlling Agreement when it assigned six (6) Laborers working the first shift on May 23, 1980 to wash the exterior of locomotive unit 6321. The Organization argues that Carrier traditionally assigned this work to Carmen at the West Burlington facility until the most recent hiring of the Laborers, and notes that Carmen still perform this work on the second shift. Several letters from long term employed Carmen at this location and Local Chairmen from other Crafts were submitted by the Organization to affirm its position; and several National Railroad Adjustment Board decisions were referenced defining the import and application of past practice. (See, for example, First Division Award No. 13058, Second Division Award Nos. 974, 1153, 3873, 4591, 8167 and Third Division Award No. 19644). The Organization maintains that Carmen exclusively washed the exterior of locomotives at this point until Laborers were assigned at this location, and avers that it is an explicit violation of Rule 83 when members of the Laborers Craft are assigned this work.

Carrier asserts that Rule 83 does not specifically reserve such work to the Carmen's Craft. It argues that in order to demonstrate that washing the exterior of locomotives has generally been recognized as Carmen's work, the Organization was obligated to show on a system-wide basis that Carmen traditionally and exclusively performed this work. Carrier avers that Laborers on the former Chicago, Burlington and Quincy Railroad on which West Burlington is located performed this work on the premerged property and still perform this work following the March 3, 1970 merger. It contends that the Organization has never asserted system-wide exclusivity or denied the statements of Carrier officers located throughout the merged system that Laborers perform this work at the different points. It maintains in effect, that even though said work was performed at one location for an extended period of time, it does not vest exclusivity when it is proven that other Crafts perform the identical work elsewhere on the property. For supportive reference, see Second Division Award Nos. 7487, 5928 et al and Third Division Award No. 7031.

In our review of this case, we agree with Carrier's position. The question of point exclusivity has been raised from time to time, but the case law on this concept is not conclusive. Rather, when questions of work exclusivity have been raised at the Board level, we must of necessity rely upon the decisional law that has painstakingly addressed this issue.

As an essential prerequisite of asserting a work exclusivity claim, the moving party is obligated to show that either clear and unambiguous Agreement language reserve this work to a particular Craft or that the work in question has historically and exclusively been performed by members of that Craft system wide. The litmus test where the latter criterion is involved is system-wide performance.

In the instant case, there is no dispute regarding the traditional use of Carmen to work the exterior of locomotives at the West Burlington facility, but this apparent locational exclusivity does not preclude the use of Laborers at this point. We have no evidence that Carmen perform this work exclusively throughout the merged system or for purposes of this case, exclusively on the former Chicago, Burlington and Quincy Railroad. In the absence of consistent case law establishing the efficacy of point exclusivity or some showing that the parties and/or the industry recognize this type of claim as uniquely acceptable, we have no viable option other than to apply our judicial standards. (See for example, Second Division Award Nos. 5928, 7948, 6867, 8731 et al.) The use of Laborers to perform the disputed work was not violative of Rule 83.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1984.