

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago, Milwaukee, St. Paul and Pacific Railroad
(Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company violated the provisions of the current Agreement, dated September 1, 1949, as amended, Rules 32(a) and 85, when the Carrier assigned other than Carmen to the work of checking for errors AAR billing repair cards, making corrections as needed, numbering, batching and filing of these bills, also handling joint inspections with the local authority.
2. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be ordered to make payment at the carmen rate of pay to Carman P. C. McAvoy of the Bensenville, IL Car Department, who was furloughed from his regular assigned position as a carman on December 1, 1982, due to the Carrier unjustly, unfairly and arbitrarily assigning other than carmen to the duties that had been done by the carmen craft historically for years at this and many other major points on the system.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to stop violating the current Agreement Rules 32(a) and 85 and restore this position and duties back to a member of the carmen craft.

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.

On November 30, 1981, the Carrier abolished nineteen (19) Carmen's positions at its Bensenville, Illinois Car Department. Among the positions abolished was the position held by Carman J. P. O'Sucha. After his position was abolished, Carman O'Sucha exercised his seniority by displacing the Claimant, a set-up Carman. As a result, the Claimant was furloughed on December 1, 1982.

With the filing of the instant claim, the Organization contends that the Carrier assigned work that has been recognized as Carman work to employees outside of the Carman classification. The work which is claimed by the Organization to have been performed by the Carmen craft "historically for years" at Bensenville and "many other points on the system" consists of the following: "checking for errors, AAR billing repair cards, making corrections as needed, numbering, batching and filing of these bills also handling joint inspections with the Local Authority." The Organization claims that the Carrier violated Rules 32(a) and 85 which state:

Rule 32 - Assignment of Work

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

Rule 85 - Classification of Work

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating of punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the Locomotive and Car Departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors,

car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

An examination of the applicable terms of Rule 32(a) and Rule 85 does not establish that the work in question is within the exclusive province of the Carmen. However, the Organization relies upon the following terms of Rule 32(a) and Rule 85 to buttress its claim of exclusivity:

Rule 32(a) "None but mechanics or apprentices regularly employed as such shall do mechanics' work ***."

Rule 85 "Carmen's work shall consist of ***, and all other work generally recognized as carmen's work."

Under these terms of Rules 32(a) and 85, consistent with the Board's long standing position, the burden is on the Organization to prove by competent evidence that the work it exclusively claims has been exclusively reserved to the Carmen on a systemwide basis, historically, traditionally and customarily. Second Division Award No. 5718. In this connection, it may very well be that the Carmen craft has performed the duties claimed, "at the Bensenville facility for years, as well as at other locations on the Carrier system including, Green Bay, Wisconsin, Milwaukee, Wisconsin, St. Paul, Minnesota and also Davenport, Iowa." However, by competent evidence, the Carrier has established that the work in dispute has been performed by Clerks in the Milwaukee, Wisconsin Car Shops, the Milwaukee, Wisconsin Davies Repair Yard, the Ottuma, Iowa Car Department and by the car foreman at the Nahant, Iowa Car Department.

The work claimed does not exclusively belong to the Carmen on a systemwide basis. Thus, it cannot be concluded that systemwide, only the Carmen have checked (AAR) repair bills, made corrections to, numbered, batched and filed such bills and performed joint car inspections. Besides Carmen, employees from other crafts have performed the work in dispute at various points throughout the Carrier's system. The work in question cannot be considered exclusive to the Carmen's craft.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1986.