Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11157
SECOND DIVISION Docket No. 10976-T
2-BN-CM-'87

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

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

Dispute: Claim of Employes:

1. That the Burlington Northern Railway Company violated the terms of the current controlling Agreement, in particular, Agreement Rules No. 27, 47, 83, 85 and 98, when they knowingly assigned work of the Carmen's Craft to furloughed employees of the Brotherhood of Railway and Airline Clerks (B.R.A.C.).

2. That this is a continuous claim under the provisions of Agreement Rule No. 34 on behalf of furloughed Carmen L. Hahn, R. Lowry, W. Wright, C. Robinson, C. Franklin, D. Johnson, J. Monczynski, C. Terry, T. Green and W. Rios, totaling ten (10) Claimants of Cicero, Illinois.

3. That the above said furloughed Carmen at Cicero, Illinois, be compensated in the amount of eight (8) hours each at the appropriate Carman's rate of pay, commencing September 1, 1983 and continuing through the time that B.R.A.C. employees are allowed to perform work of the Carmen's 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.

This is one in a series of Claims on the same issue that have been filed between these parties. The most recent Award on the issue is Award No. 10997, Second Division. That Award has drawn a vigorous Dissent from the Carrier Members of the Second Division. If that Award is in point we are compelled to follow it unless it is clearly erroneous.

The Carrier had been selling old freight cars intact to scrap dealers. Upon discovering that it was more lucrative to sell dismantled freight cars as scrap, it assigned some Clerks who were unemployed and drawing protective payments from the Carrier to cut up the cars. After this was done the present grievance was filed.

The Organization claims that the work performed by the Clerks belongs to its members under the applicable Schedule Agreement. It cites several Rules from the Agreement to bolster its case. They are:

> "Rule 27(a)
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> 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 employed."
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> "Rule 47
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> Locomotives, engines, boilers, tanks, machinery or other material assigned to scrap may be stripped or scrapped by helpers but usable material will be reclaimed by mechanics; this not to apply to stripping equipment for repairs."
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> "Rule 83
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> Carmen's work shall consist of:
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> (a) Inspecting, building, repairing, fabricating, assembling, maintaining, dismantling for repairs, upgrading of all cars and cabooses, wrecking service at wrecks or derailments subject to Rule 86."
>
> "Rule 98(c)
>
> It is the intent of this Agreement to preserve preexisting rights accruing to employees covered by the Agreement as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of the merger."

It further cites Rule 75 of the former CB&Q Railroad Company which is related to 98(c). That Rule reads:

> "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."

Although Award 10997 is closely related, it is not determinative of the issue submitted to this Board. Second Division Award 10997 found that the Clerks in that case were in the process of both dismantling and reclaiming freight cars. Hence the matter fell squarely within the teeth of Rule 47 which designates mechanics as the sole persons who are contractually able to reclaim scrap. Nowhere in the record submitted to us is the claim made that any reclaiming was being done.

If there is a Rule violation here it will have to have occurred under Rule 98(c) as it preserves Rule 75 of the former CB&Q Agreement. There would seem to be an outright preservation in that Rule for dismantling to be the work of Carmen. However, the Carrier cites Second Division Award No. 4267 which interpreted a rule from the Great Northern which is identical to Rule 75.

The situation in Award 4267 was not the same as here. Carmen had been assigned to dismantle freight cars into component parts. The parts were then routed to sections of the Shop where they were rebuilt for eventual placement into rebuilt freight cars. Some of the components were of no use and were to be sold as scrap. However, some of the components still contained wood and other nonmetallic substances which had to be removed. The Clerks from the Stores Department burned and otherwise removed the residue. The work they were performing was incidental to the usual work of the Stores Department Clerks.

In deciding the case the Board left no doubt that it was concerned only with the practice at St. Cloud, Minnesota. It stated:

> "The only portion of that rule which the organization has pointed out to support its demand for the exclusive right to perform the scrapping work involved in this case, is the single word 'dismantling.' However, that word has never been interpreted by the parties to mean any further dismantling than necessary in performing the primary functions of carmen which are to build and repair usable freight cars. That interpretation is manifested in the long standing practice at St. Cloud where employes of the carmen's craft are assigned to dismantle freight car components which are reusable, but stores department employes are assigned to cut and prepare obsolete unusable components for scrap marketing."

The Board stated that "We find that the work of cutting up cars and their components to produce marketable scrap belongs to the Stores Department." Since only components were involved, the generality of this language must be considered dicta.

We do not find any Award that is squarely in point. However, a letter from the Vice General Chairman of the Carmen, written on February 21, 1978, progressing a claim decided in Second Division Award 8542, reveals the Organization's position at the time concerning the cutting up of scrap. He stated:

> "The Carmen's craft does not claim cutting of scrap. However, this is not the case in this instant claim, which is for the removal of component freight car parts from cars destined to be destroyed. The cars cannot be considered scrap until the Carrier has removed usable parts, costing many thousands of dollars. Had it been considered scrap, the complete car would have been cut up into small parts and sold as marketable scrap. This is not the case. After the usable material has been removed, then and only then, does the remains become scrap to be cut up as marketable scrap."

In the instant case there were no usable parts removed from the freight cars. The record reveals that the entire car was to be cut up and scrapped in lieu of selling the complete car as scrap as had been the case. If parts had been removed for salvage Award 4267, which found a violation, would have controlled.

The Carrier has the right to rely on the position of the Organization concerning the Agreement for planning its course of action. In view of the position above stated, we find that the Agreement was not violated.

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 11th day of February 1987.