Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11221
SECOND DIVISION Docket No. 11189-T
2-SSR-CM-'87

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employes:

1. That the Seaboard System Railroad Company, hereinafter referred to as the Carrier, violated the controlling Agreement, when on November 13, 1984,, a Machinist was assigned to perform work which belonged to Carmen (engine carpenters) by repairing the cab door latch on locomotive SBD 5003.

2. And accordingly, the Carrier should be ordered to compensate Carman N. V. Hicks, hereinafter referred to as the Claimant, for two (2) hours and forty (40) minutes pay at overtime rate as the result of said violation.

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 International Association of Machinists and Aerospace Workers have filed a Third Party response to this Claim.

On November 23, 1984 a Machinist was required to repair a door latch on a locomotive. The work took place in the roundhouse at the Carrier's Howell Shops next to the Car Shop where Carmen were employed and on duty.

The Organization argued this assignment of Carman's work to the Machinists' craft was in violation of Rule 104, which states in pertinent part:

> "...oxyacetylene, thermit and electric welding on work generally recognized as carman's work; and all other work generally recognized as carman's work."

The Organization also claimed a violation of Rule 30, Section A:

> "30(a) None but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at outlying points, as listed below. Where there is not sufficient work to justify a mechanic of each craft, the mechanic, mechanics or foremen employed at such points, so far as capable, may perform the work of any craft that may be necessary."

The Organization claimed this is not a de minimis matter in that work belonging to the Carmen's craft was given to another craft and cites two Awards in support of their position.

The Carrier argued Rule 104 does not specifically give the work in question to the Carmen's craft, and because of this, the Organization must therefore prove that the work has exclusively and historically been recognized as Carmen's work. It is the Organization that bears the burden to prove the essential elements of their Claim.

Upon complete review of the evidence, the Board finds that the work in question was not performed on the Seaboard System exclusively by the Carmen's craft. The Rules cited do not specifically give the work in question to the Carmen's craft. However, this particular location was formerly part of the Louisville and Nashville Railroad System, and both parties stated in their Submissions the working Rules between the former Louisville and Nashville employees and the Carrier have continued to the present. It seems clear from a reading of this Docket that no other craft has specifically claimed this particular work (the Machinist's Third Party response neither claimed nor disclaimed this work) and the work was performed on a systemwide basis by the Carmen's craft on the Louisville and Nashville Railroad. The Board has required systemwide exclusivity in cases such as this. The question before the Board is what constitutes a system? The work Rules and Controlling Agreements from the Louisville and Nashville are still in effect. The "system" has not been redefined to include the Seaboard System. The system-wide test has been met. The work in question was improperly assigned to the Machinist's craft. With respect to the monetary amount of the Claim, it seems to the Board to be excessive under the circumstances. Certainly, the Carrier should understand that work belonging to a craft should be assigned to the craft, but there were Carmen on duty and this work would not have involved a call-out. The Board finds that compensation in the amount of one hour's pay at straight time is sufficient in this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.

CARRIER MEMBERS' DISSENT
TO
AWARD 11221, DOCKET 11189-T
(Referee Raymond E. McAlpin)

The decision propounded in this Award is an opinion based upon such faulty reasoning that it begs to be labelled sophistry.

In this dispute, a broken screw was drilled out and a new door latch affixed to an Engine Cab Door by an employe within the scope of an agreement other than petitioner's.

The Carrier logically defended its action on the following facts:

1. The rule relied upon is silent as to whom Carrier must assign to effect these repairs, and
2. The work has not been reserved to the Carman Craft.

The Majority correctly reiterated a consistently stated principle of this Board that "...It is the Organization that bears the burden to prove the essential elements of their Claim..." Then, for reasons that defy logic, defy common sense, and that would totally mystify a reasonably prudent individual who would review the case, it was found that "...the work was performed on a system wide basis by the Carman's craft on the Louisville and Nashville Railroad....The system wide test has been met..."

What the Majority found in this Award that would lead them to find that "...The system wide test has been met..." only they can answer but the only conclusion that the Dissentors can draw is that it was so found because:

1. The Organization repeatedly asserted that this was their work, and
2. The Craft representing the employe who did this work declined to participate as a Third Party.

The classification of work rule relied upon by petitiner does not of and by itself, reserve this work for them to the exclusion of all others, nor is it evident that the majority has so found, otherwise there would be

no necessity for the majority to hold that "...the work was performed on a systemwide basis by the Carmen's craft on the Louisville and Nashville Railroad..." Repeated assertions are no substitute for evidence and do not satisfy the burden of proof prerequisite of the petitioning party.

Nor can there be any significance attached to the fact that the Third Party in this dispute, the Machinists declined to enter this dispute. The only meaningful conclusion that can be drawn from a lack of a Third Party response is that this is not Machinists work exclusively. Further, it is this Board's responsibility to give full consideration to the Third Party's contractual rights. It should not be assumed that silence is a tacit admission that the work is exclusive to Carmen, yet, apparently, that latter conclusion was reached by the majority in this matter.

The Louisville and Nashville Railroad consists of some 6,000 miles of track, with some 10 points where engines are serviced and repairs affected as needed. The petitioner in this dispute has not, under any circumstances, satisfied their obligation "...to prove the essential elements of their claim..." They have not furnished one scintilla of evidence that they have performed this work, to the exclusion of all others, at any or all of the ten cites on the Louisville and Nashville Railroad.

We vigorously dissent.

Robert L Hicks
R. L. Hicks

P. V. Varga
P. V. Varga

M. W. Fingerhut
M. W. Fingerhut

James E. Yost
J. E. Yost

Michael C. Lesnik
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