

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad

Dispute: Claim of Employees:

1. That, the Burlington Northern Railroad violated the terms of the controlling Agreement, particularly Rules 27, 47, 83, 85 and 98, when they assigned Carmen's Class of Work to the Brotherhood of Railway and Air Line Clerks.

2. That, accordingly, the Burlington Northern Railroad be ordered to compensate Rocky Mountain Carmen A. Padilla, M. A. Rice, J. S. Rice, F. E. Flink and C. Callas in the amount of one hundred fifty-two (152) hours for each herein named Claimant.

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.

As third party in interest, the Brotherhood of Railway, Airline and Steamship Clerks were advised of the pendency of this case, but chose not to file a Submission with the Division.

This Claim is in behalf of five Carmen totalling 152 hours for each Carman. The Organization's initial Claim alleges the Carrier shipped 70 cars to Missoula, Montana, for the purpose of scrapping. At Missoula, the Organization charges the Carrier improperly assigned Clerk Craft employes "to cut up and reclaim useable materials from such cars."

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. In pertinent part, they are as follows:

"Rule 27(a) 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."

"Rule 47 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."

"Rule 83 Carmen's work shall consist of:
(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."

The Carrier denies the Organization's contentions and insists Clerk Craft employes did not reclaim usable materials. Since this case is one of a series of similar claims, it is essential to determine what the disputed work actually involved. Following the initial Claim and denial, the Carrier's Chief Mechanical Officer wrote the Local Chairman and stated the following:

"There is no provision under current schedule rule or agreement which establishes cutting cars for scrap as an exclusive right of Carmen. Clerical and other forces have historically performed this work on the predecessor roads. Clerical forces are not reclaiming parts or performing any other duties which might be construed as exclusive Carmens duties."

On July 26, the Vice-General Chairman addressed the Carrier's Director of Labor Relations and commented on the above quoted Carrier contentions. In essence, the Vice-General Chairman argued that the issue was decided in Award 8542 and quoted the following from the Award:

"On the other hand, we concur with the Organization that the explicit language in Rule 47 (Supra) specifically the wording 'but useable material will be reclaimed by mechanics' indicates that useable parts should be reclaimed by carman, ***"

Award 8542 specifically held the work in question was deemed to be scrap. That Award also held that Clerks had performed such work at Brainerd for many years before the 1970 merger. Accordingly, the Board held that this practice was protected by Rule 98(c), supra. The Organization contends Rule 98(c) preserved pre-existing rights accruing to employees as they existed under similar rules in effect on any of the former railroads prior to merger. Referring to former Rule 75 on the former Northern Pacific Railway Company, the Organization insists it is evident the right of dismantling freight cars is reserved to Carmen.

Further analysis of the record shows that after July 26, 1983, the parties continued to exchange letters. In so doing, the Carrier reiterated that BRAC employees were used to cut up cars for scrap and again asserted they performed no work related to the reclaiming of usable parts. This Board further notes that at no point in the on-the-property handling did the Organization rebut this Carrier's contention with any probative evidence. Furthermore, the record also establishes the Organization did not address the Carrier's claim that clerical and other forces have historically performed this work on the predecessor roads.

Award 8281 is a case which turned on the question of whether or not the Clerks were engaged in reclaiming usable material. The Board therein found an Agreement violation based upon a determination that usable material was being segregated. Award 8282 reached an identical conclusion.

Subsequently, Award 10997 was issued in September of 1986, and, after referring to the finding therein that useable material was being segregated, a majority of this Board found an analysis of the record made it clear BRAC employees were "saving or salvaging certain parts of the freight cars that they were dismantling." In a strongly worded Dissent, the Carrier Members insisted there was no evidence of record that substantiated that Clerks made any decision concerning salvageability or reclamation. The Dissent goes on to assert the piling up of parts is not the reclaiming of parts as reserved by Rule 47.

The most recent case involving this Carrier, Award 11157 held no prior Awards were squarely on point. Singularly, it quoted a February 21, 1978, letter from the Carmen's Vice General Chairman relating to Award 8542, which 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 this case, we have no substantive evidence which establishes whether or not Carmen initially cut away parts that had a potential re-use or, as found in Award 4267, that the cars were dismantled first and, thereafter, a Carman was called to inspect the parts already segregated in order to determine if they were salvageable.

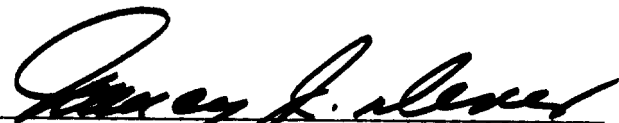
In the instant case, we find the Organization has failed to meet its burden of proof with substantial evidence supporting its position. The Organization has not shown by a preponderance of evidence that BRAC Clerks cut up and reclaimed usable material from the 70 cars in question.

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 13th day of May 1987.