

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

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the N&W Railway Company violated current agreements, Rule 7, 17, 30, 31 and 103 of the September 1, 1949 agreement, as subsequently amended, when on June 9, 1989, June 12, 1989, June 13, 1989 and June 14, 1989, the carrier used two Maintenance of Way utility carpenters to work in Planing Mill Shop building, making, measuring and completing bulletin boards and blocks used to block loads in cars, etc, which is now by rule and long standing practice at Roanoke East End Planing Mill Shop Carmen's work.

2. That because of such violation the Norfolk and Western Railway Company be ordered to compensate Planing Mill Machine Hand D. A. Wiles, who was available and had rights under the aforementioned rules and long standing practice at Roanoke East End Shops Planing Mill the following amounts:

June 9, 1989 - Four (4) hours at time and one-half rate of pay.

June 12, 1989 - Eight (8) hours at time and one-half rate of pay.

June 13, 1989 - One (1) hour at time and one-half rate of pay.

June 14, 1989 - Two (2) hours at time and one-half rate of pay.

Total of fifteen (15) hours at time and one-half rate of pay.

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 when Carrier used Utility Carpenters represented by the Brotherhood of Maintenance of Way Employees on June 9 and 14, 1989 to perform asserted Planing Mill Machine Hand work said work assignments violated Rules 7, 17, 30, 31 and 103 of the Organization's Agreement. The work involved building a 72" x 40" bulletin board on June 9, and cutting a 2" x 2" x 60" block on June 14. Specifically, the Organization maintains that since the Claimant holds Planing Mill Machine Hand rights and was available on the second shift of the claimed date he should have been assigned this work. It points out that Planing Mill Hands have performed this work for over forty years and observes that only since 1989, has Carrier directed Maintenance of Way Utility Carpenters to perform Planing Mill Machine Hand and Planing Mill Carpenters work. It also asserts that the work in question is generally recognized as Carmen's work.

The Organization submitted a signed statement by two former long term employees attesting that said work was performed by Carmen in the Planing Mill.

Carrier contends that the work performed was not related to the remanufacture or repairs of freight cars or subsumed under the language of Rule 103 reading, "and all other carpenter's work in shops and yards." It asserts that the Organization is seeking exclusive rights to work which was properly assigned to Maintenance of Way Utility Carpenters. Moreover, it argues that notwithstanding Claimant holds Planing Mill Machine Hand rights these rights do not give exclusivity to the operation of machinery which is used to cut and shape wood. It observes that since the inception of the Utility Carpenter positions in Roanoke Shops (March 9, 1984) employees holding these positions have routinely used available wood-working equipment to perform identical work. A "To Whom it May Concern" attestation statement dated September 27, 1989 was submitted by the Utility Carpenters. It reads:

"We, as the undersigned Utility Carpenters, have on numerous occasions used woodworking equipment such as saws, routers and drill presses, in the Planing Mill to construct shelves, boards, safety boards, etc. in the Roanoke Shop facilities. The above mentioned fixtures are attached to buildings."

The Brotherhood of Maintenance of Way Employees as a Third Party in Interest filed a Submission with the Board. Succinctly stated, the Maintenance of Way Employees asserted that the work of constructing and mounting a bulletin board and cutting wooden blocks in connection with the maintenance, repair and/or remodeling of Carrier's shop facility at Roanoke is clearly the type of work contemplated under their scope and work classification rules. It also contends that the Carmen failed to establish via past practice or clear rule language that said work was protected under Rule 103 of the Carmen's Agreement.

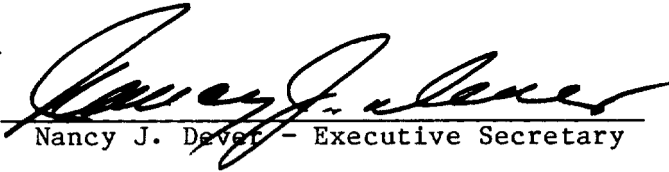
In considering this case the Board concurs with Carrier's position. While there is a presumption that said work belongs to the Carmen as evidenced by the attestation statements of the formerly employed long term employees, there is no clear Agreement language vesting such work or a demonstration of systemwide practice. There is also a presumption that at least since March, 1984 when the Utility Carpenter positions were created that said employees performed this work in the Planing Mill Shop. The Utility Carpenters September 27, 1989 attestation statement supports this observation. Since it appears and there is no credible rebuttal evidence that these employees did not concurrently perform this work prior to the abolishment of the Planing Mill Machine Hand position on April 27, 1989, we cannot conclude that Carrier violated the cited provisions of the Carmen's Agreement. The record is bereft of hard substantive affirming evidence.

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 12th day of August 1992.