

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12440
Docket No. 12213-T
92-2-90-2-359

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

PARTIES TO DISPUTE: ((International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement, Rules 26, 76, and 98(c) in particular, the Burlington Northern Railroad Company arbitrarily assigned a Machinist to operate the 22-ton Koehring Crane on December 4, 1989 at Burlington, Iowa.

2. That accordingly the Burlington Northern Railroad Company should be ordered to compensate Electrical Craft Crane Operator Bill Bragg 2.7 hours at the punitive rate of pay for its violation of the governing rules.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute, and filed a Submission with the Division.

On February 28, 1989 the Carrier's Shop Superintendent issued a letter to each Shop Craft Organization advising them that the Carrier would soon be obtaining an 18-ton Koehring Mobile Crane from the work equipment shop at Galesburg, Illinois.

On December 4, 1989, the Carrier assigned a Machinist to operate the Mobile Crane to remove for repair an outside furnace which had been utilized in the Carrier's Paint Strip Building.

The 22 ton Koehring Crane was purchased to replace a +40 ton Pettibone self propelled crane. The Pettibone Crane was purchased in 1972 and had been operated solely by the Electrical Craft from 1972 until the purchase of the Koehring Crane. The Organization contends that "these types of cranes have exclusively been operated by Electrical Crane Operators since 1972." With the filing of the instant claim, the Organization claims that the Carrier violated the Agreement and the practice, by assigning the Koehring Crane to the various crafts rather than exclusively to the Electrical Craft.

In support of its position, the Organization relies upon Rule 26(g)(2) which in relevant part, provides as follows:

"Crane operators now holding seniority as such will be carried on separate seniority rosters covering the entire district, and will have prior rights to any vacancies as crane operator. When vacancies as crane operator on cranes of less than 40 tons occur they will be bulletined as such, and if there are no bidders from the crane operators' roster the senior electrician helper bidding for the position will be assigned thereto and will establish seniority as crane operator as of the first day of service as such. When vacancies as crane operator on cranes of 40 tons or over occur they will be bulletined as such and if there are no bidders from the crane operators' roster the senior electrician mechanic bidding for the position will be assigned thereto, and will establish seniority as crane operator as of the first day of service as such. * * *

It is the judgment of the Board that Rule 26(g)(2) refers solely to seniority. As a result Rule 26(g)(2) is of no weight in the resolution of the instant dispute.

The Organization also alludes to Rule 76 which in relevant part, provides:

"* * *

Electric Shop Cranes

Electricians' work shall include the operation of electrical cranes of 40-ton capacity or over where such work is now performed by electricians, regardless of method of operation, and making running

repairs including cleaning and lubricating. Crane operators shall be assigned to operate cranes under 40 tons capacity where such work is now performed by electrical craft crane operators, regardless of method of operation * * *."

Rule 76 is limited to the operation of electric cranes by Electricians; whereas, the Koehring crane is a mobile crane.

The Organization invokes Rule 76, however, because the Koehring Crane replaced an electric crane, namely the Pettibone Crane, which, since 1972 had been operated solely by the Electrical Craft. Assuming that the Electricians exclusively performed the operation of cranes such as a Koehring Crane at the West Burlington facility, it is well established that in order to establish a practice concerning such work, evidence showing performance on a system-wide basis is required. In this connection Second Division Award 7461 involved a claim for the exclusive right to connect and remove electrical jumper cables between engine consists, as Electrician's work, and "not properly assignable to employees other than members of their craft." There was evidence that on the property in question the work in dispute had been assigned to Electricians. The Board denied the claim, while stating the following:

"The question we must decide is whether by agreement or past practice the right to perform this work was vested in the electricians. It is the opinion of this Board that if any right is to be vested it must be by past practice in that our reading of Rule 107 does not support the Organizations' claim to the work. The interpretation urged on us with regard to the phrase 'electrical wiring' is too broad. We do not believe that a reasonable interpretation of that phrase would extend its meaning to include the cables in question. The question of whether certain work is vested in a certain group of employees by practice has been before each of the several divisions of the National Railroad Adjustment Board on many occasions. We have consistently held that for a past practice to determine matters such as that before this Board, the practice must be system wide. We have no evidence in the record presented to this Board that such is true in the instant case." [Emphasis added].

The record in this dispute does not disclose exclusive performance of the work in question by Electricians on a system-wide basis. In Second Division Award 11469 involving the same parties this Board stated that it is "sensitive to issues of past practice, there is no showing of exclusivity on the Carrier's system, no showing of Agreement language assigning such work to the Electrical Craft and no showing of restrictive language holding Carrier to

assignment of the disputed work to particular equipment." Similarly, in this case, there has been no showing of exclusivity on a system-wide basis; there is no showing in the Agreement providing that the work in question is required to be assigned to the Electrical Craft and no showing of restrictive language concerning the disputed work.

The Organization refers to Rule 98(c) which it contends protects the Electrical Craft's pre-existing rights to the disputed work. Rule 98(c), in relevant part, provides:

"(c) It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN, SP&S and Frisco railroads prior to the dates of the individual mergers; 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 merger."

There is no evidence in the record of any Agreements which accorded pre-existing rights to the Electrical Craft prior to the merger. Thus, Rule 98(c) is of no assistance to the Organization.

Furthermore, the record establishes that in 1976 the Carrier issued a bulletin for members of the Electrical Craft for a mobile crane at the West Burlington facility which is different and larger than the Koehring Mobile Crane. The issuance of the bulletin merely establishes that in the past the Carrier had previously assigned an Electrician to operate a mobile crane at West Burlington. However, that the Electricians performed the disputed work in the past does not warrant the conclusion that they performed such work exclusively.

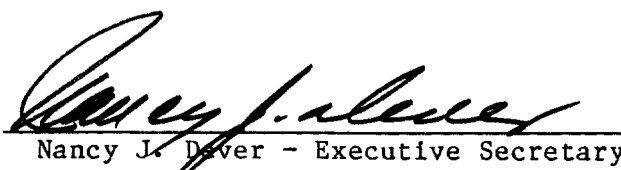
As indicated in Second Division Award 11469, which has been previously cited, the work in question "is neither exclusively, nor contractually assigned to the Organization. Carrier's determination of the equipment to be utilized is not restricted by Agreement and no violation for the Agreement therefore occurred." Moreover, the Organization failed to establish evidence of a system-wide practice of the work 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 30th day of September 1992.