

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13048
Docket No. 12842
96-2-93-2-211

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen, Division
(Transportation Communication
(International Union
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.

STATEMENT OF CLAIM: "Claim of the Committee of Union that:

1. That the Montana Rail Line, Inc. violated the terms of Article 7, Sections A, B, D, E, and F, Craft Specific.

2. That, accordingly, the Montana Rail Line, Inc. be ordered to compensate Carmen G. T. Forstner, Ruben Zundel, Richard L. Heiser, T. N. Proctor, James W. Dietz, Tim Steffens, Robert L. Hettinger, G. W. Thomas, Larry Minch, Harley Hettinger, E. V. Tuka, D. L. Besel, D. L. Greenwalt, L. M. Wombolt, and Tracy Evans (Employee Exhibits A, B, C, and D), in the amount of eight (8) hours pay for each Claimant at the straight time rate of pay commencing July 20, 1992 through August 18, 1992, as per Article 12 (d) of the Labor Agreement, because the Montana Rail Link, Inc. abolished the position of Material Handler, Bulletin No. CM-1 (Employee Exhibit M pages 4 and 5) and arbitrarily assigned the work to the International Brotherhood of Firemen and Oilers' 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Brotherhood of Firemen and Oilers was identified as a Third Party in Interest and filed a Submission for the Board's consideration. The Organization filed a response thereto.

Effective in 1987, the Carrier and various crafts became parties to a collective bargaining agreement substantially different in form from the more traditional craft Agreements. The particular nature of this Agreement is at the core of this dispute.

As of February 2, 1992, Carmen positions at the Carrier's Laurel facility were rearranged. Four Carman positions were abolished, including one designated as Carman-Material Handler. At the same time, five Carmen positions were established on the third shift.

Some five and six months later, the Carrier established day-shift Laborer positions respectively on July 13 and August 3, 1992. These positions were bulletined to be filled by employees covered under the Firemen and Oilers Agreement. The Organization contends that these positions should have been established in the Carmen craft, since the involved materials handling work had previously been performed by a Carman-Material Handler.

The 1987 Agreement was modified by an amendment on August 1, 1991. stating in pertinent part as follows:

- "A. Effective November 1, 1990, Exhibit A to the Labor Agreement is amended to the extent that the following positions are classified and shall receive the rate of pay applicable to the pay class specified:
[Included are Laborer in the Engineering Department and in the Mechanical Department and Carman in the Mechanical Department.]
- B. Employees in the foregoing positions may perform all work directly or indirectly related to the service performed. Employees may also be assigned to any other work they have the capacity to perform."

The Organization relies on Article VII, Classification of Work, in the same Agreement. This Article states that "Carmen shall perform the following duties", listing a variety of specific duties, notably not including material handling. Article VII also includes the following:

- "(f) It is the intent of this Agreement to identify work performed typically by Carmen and will not expand or extend jurisdiction where the work is performed by employees of another craft on the effective date of this Agreement.
(g) Nothing herein shall in any way modify, amend or restrict provisions of Appendices A [quoted in part above] and B of the Labor Agreement."

The Organization argues that, since Carmen-Material Handlers were utilized from "the effective date of this Agreement", the assignment of the work to non-Carman Laborers is improper. The Board does not agree. The Agreement clearly permits the Carrier to retain great flexibility in assignment of work; the specifically listed duties for Carmen do not include material handling work; and the Organization has not demonstrated an exclusive right to perform all such work.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of September 1996.