Award No. 1759

Docket No. 1688

2-CB&Q-EW-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than Electricians were used to operate overhead electric traveling crane of 40-ton capacity since February 23, 1950 in connection with setting up and building new cars.

2. That accordingly the carrier be ordered to compensate Electrician Helper Willard Siezemore the difference between the rate paid him and the operators rate for each day the 40-ton crane was operated by other than Electricians retroactive to February 23, 1950.

EMPLOYES' STATEMENT OF FACTS: Outside of the car shops at Havelock, Nebraska, there is installed an over-head electric traveling crane of 40-ton capacity. On February 23, 1950 and thereafter the carrier carried out a program of building 500 new cars. During this program and subsequent programs a store department employe was used to operate the overhead crane in connection with the setting up and building of these new cars which is confirmed by statement of store department employe Bob Evans, dated January 27, 1953 and is submitted herewith and identified as Exhibit A. The work involved in this dispute has been performed by electricians in the past, which is confirmed by statement of Crane Operators Axe and Supernaw, dated January 27, 1953, submitted as Exhibits B and C.

POSITION OF EMPLOYES: It is submitted that under the terms of Rule 70(a), reading in pertinent part as follows:

> "Electricians' work shall consist of . . . operators of electric cranes of 40-ton capacity and over and all work generally recognized as electricians' work."

the operating of overhead electrical traveling cranes of 40-ton capacity and over in connection with setting up and building new cars is electricians' work.

October 5, 1945 agreement. In those two claims the organization also surrendered their alleged right to a monopoly over the operation of all electric cranes at the Havelock Shops.

* * * * *

In conclusion the carrier avers the claim presented herein is utterly devoid of support under the collective bargaining agreement between the parties. In these separate arguments it has been shown that—

I. The organization has been guilty of gross delay and laches in progressing this claim, to the prejudice of the carrier, and this claim should be barred for that reason.

II. The Brotherhood of Railway Clerks have a material interest in this dispute, and are entitled to notice and opportunity to be heard before any of this work is taken away from them.

III. Insofar as the merits are concerned, the carrier has proved that—

(a) Current Rule 68, the classification of work rule, was entered into only after the organization gave assurance that pre-existing practice regarding the operation of cranes would be perpetuated on this property.

(b) The 40-ton crane in question at Havelock Shops has been operated by a stores department employe since 1931. In 1942 it was used in exactly the same manner as is here complained of, with a stores department operator.

(c) The 1944 agreement ordained that the practice followed in 1942 be adopted in the car building program in 1950, made the subject of this dispute.

(d) The October 5, 1945 agreement which provides that electrician helpers will be given any additional crane operator jobs is of no benefit to the employes in this dispute. No new crane operator position was established between February 7 and March 23, 1950 in the mechanical department.

In view of the above and foregoing, this claim should be summarily denied because of laches. If this type of finding is deemed inadvisable, the third party in interest must be admitted before the dispute can be finally adjudicated. After hearing the evidence on the merits, the Board must find this claim to be completely devoid of contractual support, and deny it for that reason.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The carrier maintains large shop facilities for building and repairing freight and passenger cars at Havelock, Nebraska. The shop is equipped with thirteen overhead electric traveling cranes, five of which are operated by regularly assigned crane operators of the electrical craft. The other cranes are operated by Store Department or Mechanical Department em-

ployes, dependent upon the work they perform. There is also a 40-ton overhead traveling crane mounted on a runway outside the shop building which is generally operated and used by the Store Department in handling Store Department material. In the construction of certain types of gondola and flat cars too long to be turned in the shop building, this outside crane is used to handle the underframes in constructing these cars. The carrier states that this crane is used about fifteen minutes on each car constructed and the output is ten cars per day. The organization contends the operation of the crane while used in the construction of these cars belongs to the electrical employes. The claim is made by an electrician helper for the difference in the pay he received and the crane operator's rate for each day the crane was used in connection with setting up and building new cars.

The carrier states that it commenced the construction of 300 flat cars requiring the use of the crane in question on February 7, 1950, and completed their construction on March 23, 1950. The claim covers this period.

It is not disputed that a crane operator from the Stores Department was used in performing work in connection with the building of flat cars during the period herein set out. It would appear from an examination of the Classification of Work Rule that the described work belongs to the electricians. The carrier contends, however, that the electrician's general chairman by letter bearing the date of May 16, 1944, as a consideration for making certain changes in Rules 70(a) and 70(c), agreed that all practices in connection with the operation of cranes which existed under the Agreement of October 1, 1940, should be perpetuated, except as to rates of pay specified under Rule 85 of the new agreement.

The record shows that a Stores Department employe operated the crane in question in the same manner as in the present case on all previous times when it was used in connection with the handling of cars. A crane operator from the electrician's craft has never been regularly assigned to this position. The letter is binding upon the electricians and preserves the practice which had theretofore existed. We hold therefore that the claim is not a valid one as long as the letter agreement remains in force.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1954.