

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

- 1) That the Burlington Northern Inc. violated the provisions of Rule 98(c) when it assigned Laborer Robert Jodl to perform carmen helpers' work on cabooses at Northtown Caboose Track, Minneapolis, Minnesota.
- 2) That accordingly the Carrier be ordered to compensate the following named carmen helpers eight (8) hours each at the time and one-half rate on each of the claimants' rest days shown following the claimant's name:

<u>CLAIMANT</u>	<u>DATES OF CLAIM</u>	
M. R. Hammer	May 16-17-24-25	of 1974
	June 13-14-21-22	of 1974
P. L. Ramirez	May 18-25	of 1974
	June 3-8-15-22	of 1974
T. N. Richardson	May 20-27	of 1974
	June 3-10-17-24	of 1974
C. K. Peterson	May 12-19-26	of 1974
	June 2-9-16-23-30	of 1974

and to continue on each subsequent rest day that Laborer Robert Jodl performs carman helpers duties in the absence of claimants.

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.

Parties to said dispute waived right of appearance at hearing thereon.

On April 10, 1974, a Laborer employed at the Carrier's Northtown Yard - the consolidated yard for the Twin Cities terminal, was assigned to the work of cleaning and servicing cabooses. Petitioner has averred that such work assignment constitutes an infringement upon the rights of the Carmen who perform this work. Petitioner alleges that such work assignment violated the provisions of Rule 98(c) and also that it violated the long standing past practice of assigning the work of servicing cabooses at the Northtown Yard Repair Track exclusively to carmen helpers and/or carmen.

Rule 98(c) is the outgrowth of negotiations between the parties prior to and in anticipation of the merger of the former carriers now comprising the Burlington Northern, so as to arrive at a consolidated Agreement covering all of the Shop Craft Organizations. Rule 98(c) states as follows:

"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 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 merger."

The matter of the application and/or interpretation of Rule 98(c) was the subject of extensive treatment by the Second Division of this Board in its Award No. 6867, involving the same Carrier and the Sheet Metal Workers. It would be redundant for the Board to review in detail the rationale expressed in that Award which involved an issue similar to the one at bar except for a different craft of employees. The Board, suffice to say, concurs in the reasoning set forth in that Award. Of particular significance to the subject case is that portion of Award No. 6867 that stated:

"Since the petitioning Organization has not demonstrated to this Board that the work in question is reserved to the Organization exclusively by clear, definite and unambiguous language of a rule, unencumbered by other rules of the agreement, then in order for us to sustain the instant claim the Organization must demonstrate that ..(the).. work has historically and exclusively been performed by the craft system-wide. By system-wide we mean that the burden of proof is on the Organization to show exclusivity of practice system-wide....." (emphasis added)

It should be noted that, in the subject case, Petitioner did not attempt to argue that the work of servicing cabooses was reserved exclusively to the Organization by language of a rule, nor did Petitioner assert exclusivity of practice system-wide. All that Petitioner did assert was that the questioned work had been historically performed by Carmen Helpers and/or Carmen at one point on the Carrier's system - the Northtown Yard, to the exclusion of all others.

If, for some reason, the Board was to depart from the concept that Rule 98 (c) has system-wide application only and, therefore, consider this case on the theory of "point" application we would be unable to resolve the dispute on its merits due to major and significant conflicts in the "evidence" presented.

For example, Petitioner, in its rebuttal submission (pages 2 and 3) asserts that, in spite of the merger, the old Northern Pacific Northtown Yard is, in essence, the same yard as is now known as the Northtown Yard while the Carrier asserts it to be a new, consolidated, facility that cannot be identified with any predecessor road (Carrier rebuttal page 7). Additionally, in an effort to bolster its position regarding "ownership" of the questioned work Petitioner has submitted written statements from four employees in the Carmen's craft to the effect that they have performed the work during the period of the claim and before. In this vein, the Carrier has submitted a statement signed by four former NP Yardmen stating that prior to April 10, 1974 it had been common practice for Yardmen to perform much of the servicing of cabooses at Northtown Yard.

Regarding the matter of conflicting evidence the Board has ruled in numerous instances as follows:

".... It is settled beyond question that this Board does not resolve conflicts in evidence. On the record before us we are unable to resolve this conflict, and since the burden of proof is on the Petitioning Organization, we are required to deny this claim." (see Second Division Award No. 7051; also 6964, 6876, 6856 and others)

The Board has carefully reviewed the entire record in this case and, for the reasons stated herein, finds that Petitioner has not met the burden of proof either to the applicability of Rule 98(c) to this dispute or through probative evidence sufficient to justify a sustaining award. We will therefore dismiss the claim.

A W A R D

Claim dismissed.

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Award No. 7244
Docket No. 7010-T
2-BNI-CM-'77

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1977.