

The Second Division consisted of the regular members and in addition Referee Robert A. Franden 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 Employes:

- 1) That the current agreement, particularly Rule 27 (a), 98 (c) and Carmen's Special Rules 83 and 90, were violated when other than carmen were used by the Carrier to change wheels on a car at Prineville Junction, Oregon.
- 2) That accordingly, the Carrier be ordered to compensate Vancouver Carmen T. E. Dallasta and F. C. Franco for eight (8) hours pay at straight time and six (6) hours at the rate of time and one-half 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 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 March 2, 1977, two working foremen were sent from there headquarters of Bend, Oregon to Prineville Junction to change the wheels on a box car. The Organization has progressed the instant claim based on its allegation that Carmen from the Portland-Vancouver Terminal should have been called to perform the work under Rule 90.

"Rule 90. ROAD WORK

When necessary to repair cars on the road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work as putting in couplers, draft, rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar character."

It is also asserted that rule 83 was breached.

"Rule 83. CLASSIFICATION OF WORK

Carmen's work shall consist of building, maintaining, dismantling, (for repairs), painting, upholstering and inspecting all passenger and freight cars both wood and steel; planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work; carmen's work in building and repairing motor cars, lever cars, hand cars, and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating power saws; operating punches and shears; doing shaping and forming; work done with portable forges and heating torches; straightening sheets; pressed steel, cast steel truck frames and structural steel parts of cars, either cold or requiring heating in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in shops and engine houses; writing up repairs; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work as provided for in Rule 36; and all other work generally recognized as carmen's work."

The Carrier takes the position that paragraph (a) of Rule 27 governs in this case.

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts."

The question of what constitutes a "point" has previously been decided by the Board in conflicting Awards. We hold that the better view is that a point is a specific geographical location where a foreman is employed and not over the line of road. In the instant case no foreman was employed at Prineville Junction.

In this case, however, the Carrier has asserted that a past practice existed on the Oregon Trunk Line of the former Seattle, Portland and Spokane Railway which was merged into the Burlington Northern, which past practice supports the Carrier's assignment of the foremen to perform the work. We have conflicting awards on this property as to the question of the past practice herein alleged. In the instant case the past practice has been consistently denied by the Organization. We do not find in the record sufficient evidence of past practice to support the Carrier's contention.

Carmen should have been called to perform the work in question. We will sustain the claim at the straight time rate.

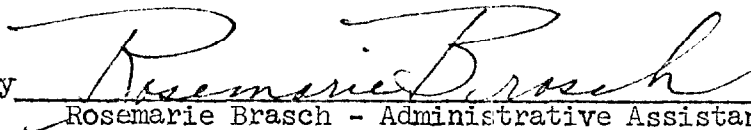
A W A R D

Claim sustained in accordance with these Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1979.