Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8542
Docket No. 8103-T
2-BNI-CM-'80

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United States and Canada

(Burlington Northern Inc.

Dispute: Claim of Employes:

1. That the Carrier violated the Current Agreement, particularly Rules 27 and 47, when they assigned Carmen's work to the Brotherhood of Railway and Air Line Clerk's, Laborers.

2. That accordingly, the Carrier be ordered to compensate Brainerd, Minnesota Carmen L. E. Borg, R. Broneak, M. E. Winterfeld, and O. K. Thompson in the amount of eight (8) hours each, each work day at the straight time (1) rate plus C.O.L.A. Commencing September 26, 1977, and continuing until violation is corrected.

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 were given due notice of hearing thereon.

The Brotherhood of Railway and Airline Clerks were served with a Third Party Notice of this dispute and have filed their submission herein.

In this dispute the Organization contends that Carrier violated its Agreement, particularly, Rules 27(a) and 47 when Carrier assigned work to employees represented by the Brotherhood of Railway and Airline Clerks on September 26, 1977 which belonged to the carman. It asserts that a continuing violation exists and requests a remedial and compensatory Award. Rules 27(a) and 47 are quoted hereinafter for ready reference.

Rule 27(a) Assignment of Work - Use of Supervisors provides in pertinent part that:

> "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foreman at points where no mechanics are employed."

Rule 47 Scrapping and Reclaiming Material states that:

> "Locomotives, engines, boilers, tanks, machinery or other material assigned to scrap may be stripped or scrapped by helpers but usable material will be reclaimed by mechanics; this not to apply to stripping equipment for repairs."

Specifically, the Organization argues that when clerks dismantled cars at the Brainerd Reclamation Plant and Dismantling Yard facility, its agreement was violated when the clerks dismantled reclaimable parts, such as would be used in the future repair of equipment on the property. It did not contest the clerks' right to cut scrap after parts were reclaimed from the equipment, but opposed assigning to BRAC the work of inspecting and dismantling reclaimable parts.

Carrier, contrariwise, disputes this position and contends on procedural grounds that the claim is defective since it is not properly a continuing claim and moreover, it is a refiling of an identical claim that was abandoned by the Organization on the property. On substantive grounds, it argues that the dismantling of cars at Brainerd is the dismantling of scrap and not the dismantling for "salvage of appurtenances and parts". It contends that the whole car is designated for scrapping and the process of recovering salvageable parts is incidental to the dismantling process, not vice versa. It asserts that the clerks had historically performed this work at Brainerd without any complaint from the carman and under Rule 50 of the Northern Pacific Agreement with System Federation No. 7, the scrapping of equipment could but did not have to be performed by helpers when such work was performed under the supervision of the Mechanical Department. Thus, when the clerks performed this work at Brainerd prior to the 1970 merger, it was not considered violative of the Carman's Agreement. Carrier concludes that when Rule 98(c) is carefully considered, which preserves existing rights and states that the Agreement shall not operate to extend scope rule coverage to agreements between another organization and one or more of the predecessor merged lines, the clerks were entitled to this work. This Rule is quoted hereinafter:

> "It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreement 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."

In our review of the case, we do not find, as argued by the Carrier, that the claim is procedurally invalid. Close reading of the record indicates that it is a continuing claim, when measured against the definitional criteria of a claim as defined in Third Division Award 14450. Admittedly, there is some surface merit to Carrier's assertion that it is a refiled claim, but arguably, the fact specifics are distinguishable.

On the other hand, we concur with the Organization that the explicit language in Rule 47 (Supra) specifically the wording "but useable material will be reclaimed by mechanics" indicates that useable parts should be reclaimed by carman,

but the equipment at Brainerd was deemed Board of Survey material, which by definition on the property, made it scrap. A persuasive argument could be made that once some scrapped parts are identified for reuse, the task of reclaiming the parts belongs to the carman. The common definition of the word "reclaim" means to restore, rather than to dismantle, but this is a semantical distinction.

More importantly, this Board cannot disregard the presence of other Rules which significantly affect and define this case, particularly at the Brainerd facility. There was no rule that reserved this work exclusively to the Organization and Rule 98(c) (Supra) which preserves pre-existing rights does not change it. The clerks had performed this work at Brainerd for many years before the 1970 merger and until 1974 without opposition from the carman and this practice at that location was protected under Rule 98(c).

We do not question the Organization's interpretative position vis Rule 47 (Supra) or the technical logic underpinning its position but the record as submitted to this Board, especially the aforementioned practice at Brainerd and the protective coverage of Rule 98 (c) judicially requires that we reject the claim.

A W A R D

Claim denied.

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 17th day of December, 1980.