

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
Norfolk and Western Railway Company

**Dispute: Claim of Employees:**

1. That the Norfolk & Western Railway Company violated the Controlling Agreement of September 1, 1949, as subsequently amended, when on January 16, 1978, they refused to bulletin jobs or vacancies writing bills at Portsmouth, Ohio. They improperly and arbitrarily assigned Carmen N. A. Hatten, D. E. Thompson and R. E. Pucket to said positions.
2. That accordingly, the Norfolk & Western Railway Company be ordered to bulletin the positions of Bill Writers at Portsmouth, Ohio in order that Carman employees will have an opportunity to bid such positions in accordance with their seniority, as provided by the Agreement.

### 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 January 16, 1978 the Carrier filled three vacancies for AAR Bill Writers on the Shop Track at Portsmouth, Ohio by appointing Carmen N. A. Hatten, D. E. Thompson and R. E. Pucket to these positions, without bulletining the positions. The Organization contends that such was in violation of Rules 17 and 103 of the Agreement, and that it is also in violation of past practice. The Organization summarizes its position in regard to Bill Writers as follows:

1. They perform the same duties as car Inspectors which are the functions of inspecting cars, for the defective parts, that, have been repaired and making out reports.
2. They are governed by the same rules of the same Agreement.
3. They are covered under the same Insurance Policies, such as Travelers, Dental Plans, and Supplemental Sickness.

4. They are covered under the same Dues Deduction Agreement.
5. In the event a Bill Writer is brought up on charges by the Carrier, the Carmen's Craft represents him.
6. They receive the same rate of pay as Carmen or Carmen Welders, however, they are paid one-half (1/2) hour straight time for the noon hour.
7. In the event their jobs are abolished, they kick any Carmen junior to them.
8. They are furloughed in accordance with their Carmen Seniority, and recalled, in the same order.
9. For many years they have been assigned their vacations in seniority order, with that of the Carmen.
10. They scale back to carmen's positions, in the event they are not needed as Bill Writers.

The Carrier contends that the Board lacks authority to grant injunctive relief. The Carrier states that the Employees have failed to either allege or prove that they have the exclusive contractual right to the work of "Bill Writing" on a systemwide basis.

The Employees contend that Bill Writing jobs require inspection of various cars for the defective parts that have been repaired, then writing a bill for the Carrier's records on Carrier-owned cars and sometimes performing foreign billing for repairs that are made on cars from other Carriers.

The Carrier's position is that Bill Writers are not covered under Rules 17 and 103 of the Carrier's Agreement. It states that Bill Writers perform no inspections in connection with their duties -- that they do not determine if a car needs repairs. The Carrier states that a Bill Writer's function is to document repairs made to freight cars in standard AAR format; to maintain records of all cars repaired under program maintenance and prepare switch lists of all cars repaired. The Carrier states the primary function of the forms filled out by Bill Writers is to permit proper billing for the cost of repairs.

It is unchallenged that the Carrier has treated the position of Bill Writer as a position not subject to the bulletin procedures of Rule 17 and not covered by Rule 103 for a period of time exceeding thirty years. And the record indicates that while a great majority of Bill Writers are Carmen, the work of Bill Writing has been and is presently performed by employees other than Carmen on all parts of the Carrier's system.

The burden of proof is on the Organization to prove all the elements of its case. We find that the term "inspecting" as used in Rule No. 103, Classification of Work is not clear and unambiguous contract language designed by the parties to encompass the work of a Bill Writer. The record indicates that Bill Writers do not determine if a car needs repairs. And, clearly if the parties intended to specifically include "Bill Writing" within the Carmen's Classification of Work

Rule the parties would have simply added to the language "bill writing" to the work enumerated in Rule 103. This the parties did not do.

If the parties intended that the work of "Bill Writing" should be covered under the Rule 103 language "all other work generally recognized as carmen's work" then it is well settled by numerous awards of this Board that the burden of proof is on the Organization to show that Bill Writing is the exclusive work of the Carmen's craft on a system wide basis. That is, the Organization has the burden of showing that a practice exists that Carmen exclusively perform the work of Bill Writing at all points covered by the Agreement in question. The Organization has not met the burden of proof in this regard, and we must deny this claim.

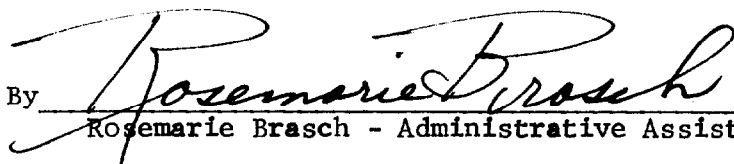
The Organization states the position that the days of yesteryears are gone when Carmen did not have the proper education to perform "Bill Writing", whereas presently Carmen have the proper education and qualifications to perform Bill Writing. It is up to the Organization to negotiate with the Carrier a change in the language of the Agreement to reflect such changed circumstances. This Board's jurisdiction under Section 3 First (i) of the Railway Labor Act is limited to disputes concerning the interpretation and application of Agreement. Changes which add to, modify or amend the existing Agreement, regardless of merit, must be pursued under the procedures of Section 6 of the Railway Labor Act.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1981.