Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD SECOND DIVISION Award No. 9062 Docket No. 9128-T 2-DM&IR-CM-'82

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute:

Brotherhood Railway Carmen of the United States and Canada

Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employes:

- 1. That the Duluth, Missabe and Iron Range Railway Company violated the controlling Agreement, particularly Rule 57, when they arbitrarily assigned other than the carmen's craft to fill water tanks on caboose #234 at Biwabik, Minnesota, on January 29, 1980.
- 2. That accordingly, the Duluty, Missabe and Iron Range Railway Company be ordered to compensate Carman R. J. Woods four (4) hours at the pro-rata rate for January 29, 1980.

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.

The Organization alleges that the Carrier violated the Carmen Classification of Work Rule (Rule 57) of the applicable agreement on January 29, 1980 when it assigned an electrician at Keenan Yard to go to the Carrier's yard at Biwabik, Minnesota to fill the water tanks on Caboose No. 234.

The Carrier has, in the past, assigned this task to a first shift carman stationed at Keenan Yard. The Keenan Yard carman who the Carrier has usually instructed to fill caboose water tanks at Biwabik was absent on January 29, 1979. Five other carmen were on duty at Keenan Yard. Claimant is a second trick carman stationed at Biwabik and he was available to perform the work.

The Organization contends the Carrier sent an employee of other than the carmen's craft to Biwabik because the remaining first shift carmen were all occupied with other work. According to the Organization, the Carrier improperly instructed a member of the electrical craft to perform the work to avoid paying overtime to Claimant. The Organization cites the following portion of Rule 57 to support its claim:

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"Carmens' work shall consist of building, maintaining, dismantling (except all wood freight train cars), ... and inspecting all ... freight cars, both wood and steel ... and all other work generally recognized as carmens' work."

On the property, the Organization presented twenty-eight statements from carmen that show the carmen have historically and exclusively performed work consisting of the replenishment of caboose water tanks at various points along the Carrier's system.

The Carrier concedes that at many points, including Keenan and Biwabik, members of the carmens' craft have usually performed the disputed work. However, according to the Carrier, at Proctor, Store Employees (who are not represented by the Organization) have traditionally and exclusively filled caboose water tanks. The Carrier also points out that Rule 57 is silent with regard to work consisting of caboose servicing and thus, the carmen do not have sole jurisdiction to the disputed work either by rule or past practice.

An examination of Rule 57 discloses that Rule 57 does not expressly refer to the particular work in dispute. The question becomes whether or not the work is within the general or catchall provision of Rule 57. Numerous decisions of this Board have ruled that in order to establish exclusive rights to work which is not expressly reserved to the Organization in a classification of work rule, the Organization has the burden of proving, by past practice, that the work traditionally and exclusively belongs to carmen on a systemwide basis. Second Division Awards No. 5316 (Johnson) and No. 7295 (Twomey). The statements of carmen proffered by the Organization during the handling of this claim on the property merely demonstrate that carmen fill caboose water tanks at certain local points along the system. None of the carmen providing statements on the past practice declared that carmen have performed the disputed work at Proctor. The Organization has not met its burden of proving an exclusive right to perform the task on a systemwide basis and so we must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

Attest:	Acting Executive Secretary National Railroad Adjustment Board
By	Remarie Brosch
Rose	marie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.