

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 & Iron Range Railway Company

Dispute: Claim of Employees:

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 adjust a shifted load on the repair track at Proctor, Minnesota, on March 25, 1980.
2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate Carman Richard C. Goerts four (4) hours at the pro-rata rate for March 25, 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 pertinent facts are not in dispute. On March 25, 1980 the Carrier assigned a member of the Maintenance of Way craft to operate a mobile swing boom crane to adjust a load of pulpwood logs which had shift in Soo Line Gondola Car No. 63871 on the repair track at Proctor. Two carmen assisted in adjusting the load so the gondola could be transferred, in a safe condition, to a connecting railroad.

The Organization claims the Carrier violated Rule 57 of the controlling agreement by assigning an employee who was not a member of the carmen's craft to operate the crane. Claimant, a carman at Proctor, seeks four hours of pay at the straight time rate as compensation for the alleged contract violation. In essence, the Organization argues that work consisting of the adjustment of shifted loads on repair tracks is exclusively reserved to carmen on this property by both Rule 57 and past practice. To support its argument, the Organization presented statements from fourteen carmen attesting that carmen have historically performed the disputed work on repair tracks at Steelton and Proctor to the exclusion of all other crafts.

The Carrier does not dispute the Organization's assertion that carmen have traditionally performed the work when a rail car is sent to the Steelton or Proctor repair tracks for adjustment of a shifted load. However, the Carrier raises three defenses. First, the disputed work is not expressly reserved to carmen by Rule 57 so the Organization must demonstrate that carmen have exclusively and historically performed the disputed work on a system wide basis. Second, the Carrier proffered invoices from outside contractors who have adjusted shifted loads to buttress its assertion that carmen alone do not perform the work. Third, the Carrier points out (and the Organization agrees) that other crafts adjust shifted loads on cars in transit along the Carrier's right of way and at remote points where no carmen are stationed. The Carrier contends that proving exclusivity over the disputed work at only two repair tracks narrows the Organization's claimed scope of jurisdiction to cover less than the entire system.

The classification of work provision (Rule 57) makes no express or implied reference to the adjustment of shifted loads and the nature of the work is not universally recognized as work reserved to carmen. Thus, the Organization must prove the disputed work has been exclusively, historically and traditionally reserved to the Carmen's craft on a system-wide basis. Second Division Awards No. 7295 (Twomey) and No. 5921 (Zumas). The contractor's invoices are not relevant to the issue of exclusivity in this case because all the invoices submitted by the Carrier are more than seven years old.

The issue is how we should interpret the "system wide exclusivity" requirement within the context of this dispute. The Organization disavows any claim to adjusting shifted loads while cars are in transit along the Carrier's line or at remote points. So, if we view the system wide requirement to broadly include the adjustment of shifted loads when performed at places other than the two primary repair tracks, as the Carrier urges us to do, the claim must fail. On the other hand, the Organization maintains that "system wide" should be narrowly interpreted to cover only the adjustment of shifted loads at the Carrier's major repair tracks.

Here, the identical work is often performed outside the shops and repair tracks. From the record before us, it appears the task of adjusting a shifted load is performed in the same fashion and with same equipment on the Proctor and Steelton repair tracks as well as along the Carrier's rail line and at other points. Absent evidence that the work is, in some manner, performed differently at places other than the two repair tracks, the term "system wide" most appropriately includes all locations where shifted loads are adjusted. Thus, we must deny the claim.

A W A R D

Claim denied.

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Award No. 9142  
Docket No. 9201-T  
2-DM&IR-CM-'82

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.