Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10090
SECOND DIVISION Docket No. 9883-T
2-BN-CM-'84

The Second Division consisted of the regular members and in addition Referee Tedford E. Schoonover when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That the Burlington Northern, Inc. violated the provisions of the current agreement when it improperly assigned other than Carmen to perform Carmen's work, when they used the Firemen & Oilers Craft (Laborers) to assist Carmen in the performance of their duties on April 9, 1981. (The former Frisco agreement is still in effect on the property hereafter mentioned.)

2. That accordingly, Carman D. R. Jameson be compensated four (4) hours at the Carman's straight time rate.

3. That this violation not be repeated and that Carmen be allowed to operate the tools which are used or needed to perform Carmen's work safely and efficiently.

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 employes 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.

In explanation of the claim the Organization states that Carman D. R. Jameson was available and a qualified person to perform the work described as follows:

"On April 9, 1981, a member of the Firemen & Oilers Craft (laborer) was instructed by a Carrier officer to operate a 36 ton Pettibone Crane to assist Carmen from 10:45 a.m. to 11:30 a.m. and further instructed laborer to hoist Car NSL155091 for the removal of the trucks from said car. The car was then placed on tripods by Carmen. The car trucks were then hoisted to allow Carmen to make necessary repairs to said trucks. At 12:35 p.m., April 9, 1981, the same laborer operated the same crane, hoisting trucks to allow Carmen to put in new wheels. Without the crane and operator, repairs made by the Carmen could not have taken place, as the repairs were made on a side track, where there is no air to operate car jacks, nor was there an 'A' frame available at this location to dismantle or to repair car trucks."

The record shows that there have been jurisdictional differences between the Carmen's and Firemen and Oilers' organizations for many years over work such as covered by this claim. The Carmen endeavored without success to secure from the Firemen and Oilers' organization a clearance reserving to carmen exclusive right to the work in question.

In consideration of this claim as it relates to the jurisdictional differences between the Carmen's and the Firemen and Oilers' organizations the latter was notified and requested to provide a statement of position. Such statement was provided by Wm. B. Hayes, General Chairman, System Council #11 as follows:

> "It is the position of the International Brotherhood of Firemen and Oilers that the operation of a crane to hoist a car for removal of trucks which were repaired by Carmen is work which should properly be performed by members of the Firemen and Oilers Craft.
>
> This work has historically and customarily been performed by these employees, and included in Rule 2 of the current agreement, Job classifications, Group B, Item 3, is the classification of Hoisting Engineer. Accordingly, the work was properly assigned.
>
> We have been unable to find any reference in the Carmen's classification of work rule which gives them exclusive operation of cranes. Since laborers use cranes to lift heavy objects in the performance of their everyday duties, we fail to see that any violation of the agreement occurred when Laborer K. Branstine operated a crane to hoist a car for removal of trucks which were repaired by Carmen."

Rule 51 of the applicable labor agreement specifies that in the event of a jurisdictional dispute the craft performing the work shall continue to do so until the dispute is settled by the crafts involved. The rule also provides that where an allocation of work cannot be agreed upon in conference between the carrier and the union the carrier may require the work to be performed by the craft they consider entitled to the work.

Evidence of the jurisdictional problem and understandings reached between the Brotherhood and the carrier on the question of laborers performing work claimed by the Carmen is contained in the following excerpt of a letter of September 27, 1977 signed by the General Superintendent Car Department:

> "It was further agreed that on the 4:00 PM shift we would add one carman apprentice to assist in the supplying of car parts for the various car building programs and that members of the Firemen and Oilers group would be used only in the stockpiling of material."
> (Underscoring added.)

The above letter illustrates understandings effected between the Carmen's Organization and the carrier in a compromise settlement as to which craft would perform the work and also illustrates that the Carmen did not have exclusive jurisdiction.

The claim, as presented on the property was initially declined because it was presented to J. H. Hall, Superintendent of the Locomotive Shop rather than J. R. Wilson, Superintendent of the Consolidated Freight Car Shop where the work was performed. The record indicates that at no time was the claim presented to Mr. Wilson as required by Rule 34 (a) which provides that "claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days of the occurrence on which the claim is based." Failure to file the claim with the proper officer in violation of the above rule would appear to support Carrier contention the claim should be dismissed. However, without waiving its position in this regard, carrier proceeded to consider the claim on its merits and this Board will do likewise.

In support of the claim the Organization submits carrier violated Rule 115 of the Agreement as follows:

> "Carmen's Special Rules, Classification of Work, Rule #115
>
> Carmen's work shall consist of building, maintaining, dismantling, ... all passenger and freight cars, ... repairing, and removing and applying wooden locomotive cabs, pilots, beams, running boards, ... tender frames and trucks, ... and all other work generally recognized as carmen's work."
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> "Rule 31. (a) Except as otherwise provided by the rules of this agreement, none but mechanics or apprentices, regularly employed as such shall do mechanic's work as per the special rules of each craft ..."

Examination of the above rules shows that the work of building, maintaining and dismantling of passenger and freight cars is recognized as carmen's work.

The Organization cites Award 1363, but examination of that award shows the circumstances were somewhat at variance to this case. In that situation the crane was operated by persons not covered by any agreement and they were also used to remove and apply roofs of cars. The latter is clearly carmen's work under the rules. In this case, a laborer operated the Pettibone Crane to hoist the car for removal of trucks "to allow carmen to make necessary repairs to said trucks.". The same crane was again operated by a laborer to hoist trucks to allow carmen to put in new wheels. In this case the crane was operated by a member of another craft covered by another labor agreement and carmen were allowed to perform the work reserved to their craft under the rules. Thus, there was no violation of carmen work rules.

The record is replete with evidence that the operation of cranes has not been established as exclusively belonging to the carmen's craft. The operation of a crane is used to lift and move heavy objects and does not constitute the building, maintaining, repair or dismantling of freight or passenger cars. There is no evidence to show that by general practice members of the carmen's craft have been used to operate cranes.

The carrier contention that laborers have operated cranes in the past was not refuted by the Organization. This case is similar to one which the Carmen's organization had on the DM&IR which was decided by Award 9062 as follows:

> "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). ..."

In the absence of past practice showing the work was done by carmen and also the lack of specific language in the rules reserving such work to members of carmen's craft the claims must be rejected.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.