

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employes:

1. That the Burlington Northern Railroad willfully and knowingly violated the provisions of the current controlling Agreement when it assigned other than Carmen to perform Carmen's work at the Consolidated Freight Car Shops, Springfield, Missouri on March 3, 1981.
2. That Carman L. E. Nichols be compensated a four (4) hour call at the Carmen's pro rata rate.
3. That these violations not be repeated.

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.

The Claimant, Carman L. E. Nichols, is employed by the Carrier, Burlington Northern Railroad, at its Consolidated Freight Car Shops, Springfield, Missouri.

On March 3, 1982, a Carrier Supervisor instructed a laborer to use a 30-ton crane to straighten the side of a box-car. Before the laborer performed this work, Carmen protested to the Supervisor that it was Carmen's work. The Supervisor ignored the protest, and the laborer performed the work. The Organization thereafter filed a claim on behalf of the Claimant, alleging that the Carrier violated the controlling Agreement by assigning Carmen's work to other than Carmen and thereby deprived the Claimant of the work.

The Organization contends that the disputed work has been performed both historically and contractually by Carmen. The Organization therefore argues that because Carmen and the proper straightening equipment were available at the relevant time, Carmen should have performed the disputed work.

The Organization further asserts that the nature of the work, not the machinery used, determines which craft is to perform the work. The Organization points out that representatives of several crafts from the Springfield Shops, including the laborers, agreed in writing that the repair, maintenance, and straightening of the sides of freight cars is Carmen's work.

In addition, the Organization claims the right to use machinery such as cranes to perform Carmen's work, but does not claim the exclusive right to operate such machinery. Although laborers are assigned to operate some of the same machinery as part of their own duties, the Organization asserts that laborers may not perform Carmen's work or assist Carmen with car repairs.

Finally, the Organization contends that the claim should be sustained, and the Claimant should receive four hours' pay at the pro rata rate.

The Carrier maintains that the Organization did not establish that Carmen have the exclusive right to operate a crane that is used to straighten a rail car's side. The Carrier asserts that the Agreement does not reserve such work exclusively for Carmen, and past practice establishes that laborers previously have used cranes to assist in straightening rail cars; such work is not skilled craft work, nor is it generally recognized as Carmen's work.

In addition, the Carrier argues that the controlling Agreement's rule governing Carmen helpers does not cover the use of cranes to push the sides of rail cars; the Agreement, therefore, does not prohibit laborers from using cranes in this way. The Carrier argues that because there is no rule giving Carmen the exclusive right to operate cranes to straighten the sides of rail cars, then the past practice of laborers performing this work should govern.

The Carrier also argues that the availability of other straightening machinery is irrelevant because the Agreement does not require the Carrier to use a less efficient method to perform the work. Subject to its contractual and legal obligations, the Carrier may manage its business as it sees fit.

The Carrier argues that there is no basis for the claim because the Agreement does not expressly refer to the disputed work, and the Organization has not shown a system-wide practice reserving the work exclusively to Carmen.

Finally, the Carrier maintains that there was no contractual violation, and the claim should be denied.

It is well settled that unless there is a rule between the parties which states that a particular Organization has the exclusive right to perform certain work, the Organization has the burden of proving, by past practice, that the work traditionally and exclusively belongs to members of that Organization on a system-wide basis. (See Awards 10091 and 9062.)

Moreover, we have held that:

"...Where work may properly be assigned to one or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent..."

In the case at hand, there has been no showing that there is a rule that states that Carmen have the exclusive right to operate cranes to straighten car sides. Moreover, the Agreement does not expressly refer to the particular work in dispute, and the Organization has not shown that the work traditionally and exclusively belongs to the Carmen on a system-wide basis. Hence, this claim must be denied.

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 4th day of September 1985.