Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10861
SECOND DIVISION Docket No. 10787
2-MP-CM-'86

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

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rules 25 and 102 of the controlling Agreement and Article V of Agreement of December 4, 1975 when they used other than Carmen to drive Company truck and deliver necessary material to maintain freight cars April 12, 1983.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. L. Anderson in the amount of eight (8) hours at the punative (sic) rate account of this violation.

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.

Claimant is employed by the Carrier at its Dupo, Illinois facility. At the time of the claim, the Claimant was assigned to the emergency road truck headquartered at Dupo.

Prior to April 12, 1983, there was a derailment in Flinton, Illinois, approximately forty-nine (49) miles from Dupo; the Carrier sent its emergency road truck and two Carmen to the derailment site. On April 12, 1983, the Carrier sent its Assistant General Car Foreman from Dupo to Flinton with some necessary material. Claimant was available to perform this work on April 12, 1983. The Organization subsequently filed a claim on the Claimant's behalf, seeking compensation in the amount of eight (8) hours' pay at the punitive rate.

The Organization contends that the Carrier violated Rules 25 and 102 of the current Agreement and Article V of the Agreement of December 4, 1975. Rule 25 provides, in part:

> "(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.
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> . . .
>
> This rule does not prohibit foremen in the exercise of their duties to perform work."

Rule 102 states, in part:

> "Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel, . . . and in all other work generally recognized as carmen's work."

Article V amended an earlier Agreement and governs subcontracting.

The Organization claims that the Carrier arbitrarily decided to use an Assistant General Car Foreman to deliver the necessary material to the derailment site. The Organization contends that the cited Rules establish that the Claimant should have been assigned to perform this work. The Organization therefore asserts that the claim should be sustained.

The Carrier maintains that this Board has held that an Organization must prove its entitlement to disputed work through specific rule language; in the absence of such language, an Organization must prove its entitlement by exclusive, systemwide past practice. Carrier contends that the instant claim concerns only a Supervisor's driving of a Company vehicle, containing needed material, from Dupo to Flinton. The Carrier asserts that the Organization has not attempted to identify any portion of the Agreement that contains a reference to the disputed work. Also, there is no showing that Carmen historically have performed this work on a systemwide basis, or that the Organization has any historical, systemwide, exclusive right to the work.

The Carrier points out that the Organization has cited three contractual provisions in support of its claim. There is no language in Rule 102, the Classification of Work Rule, that identifies the disputed work. The Organization also cites Rule 25; this Rule, however, specifically provides that foremen are not prohibited from performing any work in connection with

their duties. The Carrier asserts that transporting a length of hose is incidental to a supervisor's duties and within the scope of Rule 25. The final provision cited by the Organization is Article V of the Agreement of December 4, 1975. This provision amended an earlier provision that governs subcontracting of work; the Carrier argues that it has no application to this dispute. The Carrier therefore contends that the Organization has not supported its claim with any specific contract language.

The Carrier also argues that the Organization has failed to deny, rebut, or comment in response to Carrier's assertion that the disputed work is not reserved to Carmen by either rule or practice. The Carrier asserts, therefore, that the Organization has failed to meet its burden of proof.

The Carrier contends that the disputed work does not belong exclusively to any single craft by either rule or past practice. Instead, it is a normal systemwide practice for supervisors to transport tools, parts, and supplies to employes working on the line of road. The Carrier finally contends that the claim is without merit and should be denied in its entirety.

This Board has reviewed all of the evidence in this case; and it finds that although the facts in this case are not in dispute, the Organization has not met its burden of proof in support of the claim. The Organization has not identified any language of the agreement, or any past practice for that matter, which clearly reserves the work in question to members of the Organization. No language is contained in the Rules cited by the Organization which identifies the truck driving work involved here as being Carmen's work.

It has been long established by this Board that in order to merit a sustaining award on a work assignment issue, the Petitioner must prove entitlement to the work by specific rule language or, at least, by some consistent past practice. See Awards 7020 and 5921. That has not been done in this case. 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 28th day of May 1986.