Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10875
SECOND DIVISION Docket No. 10783
2-AT&SF-CM-'86

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
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

1. That the removing of Bad Order trucks and replacing with new or reconditioned trucks in connection with building and maintaining passenger and freight cars or the dismantling thereof for repairs, is Carmen's work under the current Agreement.

2. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, specifically Rule 36(a), also, Rules 9(c), 9(d), 9(e), 9(g) and 10(d), when they improperly instructed and/or allowed employees other than Carmen, namely teamsters, to operate travel lift cranes to assist carmen in performing the aforesaid work.

3. That accordingly the carrier be ordered to additionally compensate Carman K. Gorski in the amount of four (4) hours at the applicable time and one half overtime rate of pay for violation on December 27, 1982. Further, that the carrier be ordered to assign carmen to perform the aforementioned work in Items 1 and 2 hereof.

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 K. Gorski, is employed by the Carrier, the Atchison, Topeka and Santa Fe Railway Company, at its Chicago (Corwith), Illinois

Inspection and Repair point. On December 27, 1982, two Piggyback cars with defective wheels were repaired. A travel lift was used to assist the Carmen in this work; the travel lift operators are not Carmen. The Organization subsequently filed a Claim on the Claimant's behalf because the Carrier had used employees other than Carmen to operate the travel lift in assisting Carmen to perform their duties.

The Organization contends that the Carrier violated Rule 98, the Classification of Work Rule, which provides that "Carman's work shall consist of building, maintaining, dismantling for repairs, . . .and inspecting all passenger and freight cars . . .; and all the other work generally recognized as carmen's work." The Organization also points out that Rule 36(a) provides, "None but mechanics or apprentices regularly employed as such shall do mechanic's work per the rules of each craft."

The Organization contends that although the Carrier may choose any means to perform work, the disputed work belongs to the Carmen and must be assigned to them. The Organization maintains that raising and lowering cars, by whatever means, in order to repair the cars is work that belongs to the Carmen. The Organization argues that the Carrier used travel lift operators to perform Carmen's work; this is inconsistent with seniority and assignment of work provisions.

The Organization further asserts that on December 27, 1982, the Carrier was utilizing all the on-duty Carmen; the Claimant was on his rest day. The Claimant was willing, available, and qualified to report and perform the work on an overtime basis. The Organization contends that the Claim should be sustained, and the Claimant is entitled to compensation in the amount of four (4) hours at the time and one-half rate of pay.

The Carrier contends that the disputed work does not belong exclusively, on a systemwide basis, to any one craft. Neither Rule 36 nor Rule 98, the Carrier argues, specifically mentions the disputed work or reserves it to Carmen. The Carrier asserts that if the disputed work is to be considered "generally recognized" Carmen's work under Rule 98, the Organization must show that such work historically has been performed by the Carmen on an exclusive, systemwide basis.

The Carrier asserts that it has shown that the practice with regard to the disputed work has varied both at Corwith Yard and systemwide; several crafts have operated travel lifts. Also, the Carrier argues that the Organization has not refuted the evidence that the Carrier has presented on this point. In fact, the Organization has acquiesced in the performance of the disputed work by employees other than Carmen; the Organization previously has not disputed this practice. The Organization therefore has not shown that the disputed work historically has been performed by Carmen on an exclusive, systemwide basis.

The Carrier further asserts that only Carmen were involved in the actual replacement of the defective wheels; the lift operators only operated a machine at the direction of the Carmen. The Carrier argues that its assignment of work is further supported under the de minimis principle; the

disputed work took only a few minutes to perform. The Carrier also claims that there is an insufficient amount of such work to justify calling in a Carman to perform the work on an overtime basis.

Finally, the Carrier contends that the Organization's Claim for four (4) hours pay at the time and one-half rate is excessive. The Carrier points out that if Carmen had been used to perform the disputed work, then the on-duty Carmen would have done the work; the Claimant would not have been called in. Even if the Claimant had been called in to perform the few minutes' work in dispute here, the Claimant would have been compensated for a four-hour call under Rule 9(d), which provides:

> "(d) Employes called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and which cannot be performed by the regular force in time to avoid delays to train movement."

The Claimant would not have received four hours' pay at the time and one-half rate as the Organization claims. In addition, the Carrier asserts that the governing Agreement does not provide for a penalty such as the Organization is claiming.

Finally, the Carrier asserts that the Organization has not met its burden of proof. The Carrier argues that no violation of the Agreement occurred. The Carrier therefore contends that the Claim should be denied in its entirety.

This Board has reviewed all of the evidence in this case; and it finds that although the facts are not in dispute, the Organization has not presented any Rule or past practice which requires that the performance of the work in question belongs exclusively to the Carmen. It is well settled that the Organization has the burden of proof in these assignment of work cases and must either point to a Rule that it set forth in the Agreement or some past practice which supports its position that the work was improperly assigned to another craft.

Although the Organization has cited some Rules of the controlling Agreement, those Rules do not state that the operation of the travel lift is exclusively Carmen's work.

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 June 1986.