Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10997
SECOND DIVISION Docket No. 10779-T
2-BN-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: (
(Burlington Northern Railroad

Dispute: Claim of Employes:

1. That the Burlington Northern Railway Company violated the terms of our Current Agreement particularly Rules 27, 47, 83, 85, and 98 when they assigned carmen's work to the Brotherhood of Railway and Air Line Clerks.

2. That, accordingly, the Burlington Northern Railway Company be ordered to compensate the below listed furloughed Minot-Yellowstone District carmen in the amount of eight (8) hours pay each at the straight time rate for each day commencing February 22, 1983 and continuing until the work of dismantling of cars is returned to the Carmen Craft:

1. M. D. Just
2. D. R. Riedinger
3. C. W. Zearly
4. W. L. Bailey
5. S. C. Lee

Also commencing February 24, 1983 eight (8) hours pay for each below listed Claimants for each day and continuing until the work of dismantling cars is returned to the Carmen Craft:

1. G. J. Messmer
2. R. F. Poppe
3. W. P. Lade
4. B. T. Nygaard

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.

As of February 22, 1983, Minot-Yellowstone District Carmen M. D. Just, D. R. Riedinger, C. W. Zearly, W. L. Bailey, S. C. Lee, G. J. Messmer, R. F. Poppe, W. P. Lade, and B. T. Nygaard, the Claimants, were furloughed employes of the Burlington Northern Railway Company, the Carrier. On February 22, 1983, the Carrier assigned to employe-members of the Brotherhood of Railway and Airline Clerks (BRAC) the work of dismantling freight cars and saving components of those cars for later reclaiming, repairs, and use as second-hand parts. The Claimants were available and qualified to perform this work.

The Organization then filed a Claim on the Claimants' behalf, charging that this was Carmen's work. The Claim seeks compensation for Claimants Just, Riedinger, Zearly, Bailey, and Lee in the amount of eight (8) hours' pay per day, commencing with February 22, 1983, and continuing until the disputed work is returned to the Carmen; it seeks the same compensation for the other Claimants, commencing with February 24, 1983.

The Organization contends that prior to February 22, 1983, BRAC Members never dismantled cars or performed any other work generally recognized as Carmen's work at Minot, North Dakota; Carmen exclusively performed all work classified or recognized as Carmen's work, including inspecting cars, repairing freight equipment, and dismantling all cars.

The Organization argues that the Carrier violated Rules 27(a), 83, and 47 of the Controlling Agreement. These Rules provide:

"Rule 27: Assignment of Work--Use of Supervisors

(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."

"Rule 83: Classification of Work

Carmen's work shall consist of: (a) inspecting, building, repairing, fabricating, assembling, maintaining, dismantling for repairs, upgrading of all cars and cabooses, wrecking service at wrecks or derailments subject to Rule 86 ...."

"Rule 47: Scrapping and Reclaiming Material

Locomotives, engines, boilers, tanks, machinery, or other material assigned to scrap may be stripped or scrapped by helpers but usable material will be reclaimed by mechanics; this is not to apply to stripping equipment for repairs."

The Organization contends that these provisions clearly establish that the disputed work belongs to the Carmen and should be performed only by Mechanics or Apprentices employed as Mechanics. Further, Rule 47 provides the limited conditions under which helpers may strip or scrap material; it makes clear, though, that only Mechanics may reclaim usable material.

The Organization therefore asserts that the Carrier did not have any contractual authority to assign the disputed work to BRAC employes. The Organization further claims that Carmen historically had the right to perform all dismantling work at Minot Gavin Yard. The Organization points out that the BRAC employes assigned to perform the disputed work are surplus Office Clerks; these employes are unfamiliar with the work and never have performed this work at Minot or at any other point. The Organization contends that the Carrier cannot take work away from a craft either arbitrarily or by claiming that it is new work. Also, the Organization asserts that it properly filed a continuous claim because the violation is continuing on a daily basis.

The Organization maintains that there is no support for Carrier's contention that the BRAC employes only cut up cars for scrap and they have done such work in the past. The Organization asserts that the record establishes that the Carrier directed the Minot Clerks to save usable parts and then sent these parts to other locations; also, the Minot Clerks never have cut up cars for any reason. The Organization argues that the Carrier clearly is assigning Carmen's work to employes other than Carmen.

The Organization also asserts that Rule 98(c) preserves all pre-existing rights on former Great Northern property, such as Minot; all rights that accrued to Carmen at Minot prior to the date of the Railroad merger have not been affected by that merger. Rule 98(c) states:

> "It is the intent of this Agreement to preserve pre-existing rights accruing to employes covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of the merger, and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

The Organization argues that under the former Great Northern Rules, the sole exception to the Carmen's right to dismantle cars was all-wood cars; the cars involved in this dispute are steel. Further, the current Agreement's provisions reserve the disputed work for the Carmen's craft. The Organization therefore contends that the Claim should be sustained.

The Carrier contends that Section 3, First (j) of the amended Railway Labor Act requires that all parties involved in a dispute receive notice of the proceedings. As the Collective Bargaining Agent of the employes who performed the disputed work, BRAC must be given notice of this proceeding for the Board to obtain jurisdiction to issue a valid and binding award. The Carrier argues that this Board will abdicate its duty to settle the entire dispute if BRAC does not receive the required notice.

The Carrier also contends that the Claim is without merit. The Carrier asserts that it has the right to assign its employes and operate its business in any legal manner; this right is limited only by the clear and unambiguous language of the Controlling Agreement. The Organization has the burden of proving either that the Agreement grants it an exclusive right to the disputed work or that it historically has performed the disputed work on an exclusive, systemwide basis.

The Carrier contends that it properly assigned to BRAC employes the work of cutting up railroad cars for scrap; the saving of parts that may or may not be reclaimed was incidental to the work. The Carrier argues that the Agreement does not give the Organization an exclusive right to this work. The Carrier asserts that Rule 83, the Classification of Work Rule, makes no mention of scrapping cars and incidentally saving reclaimable parts, though it does mention dismantling for repair. In this case, the whole cars were destined for scrap; the cars were not "usable material" needing repair, work that carmen perform under Rule 47. The Carrier argues that this distinction establishes that the disputed work is not reserved to Carmen. The Carrier points out that any parts that can be reclaimed are subsequently repaired by Carmen, in accordance with the Agreement.

The Carrier further argues that the cars in question were "material assigned to scrap" under Rule 47; this Rule states that such material may be stripped or scrapped by helpers. The Carrier asserts that this language includes other employes by implication and preserves the Carrier's right to decide how to best utilize its work force. The Carrier adds that during the handling of this Claim on the property, the Organization conceded that "it is true" that the Agreement does not grant to Carmen the exclusive right to cut up scrap cars and incidentally save scrap parts. The Carrier therefore contends that the Agreement does not reserve the disputed work to Carmen.

The Carrier further asserts that the Organization has not established that it had any contractual right to the disputed work prior to the merger. The prior Classification of Work Rules, the Carrier contends, did not reserve the disputed work to Carmen. Rule 98(c) preserves only pre-existing rights; it does not expand the scope of the Work Rules. The Carrier argues, therefore, that Rule 98(c) does not support the Organization's Claim.

The Carrier additionally contends that Carmen have not historically and exclusively performed the disputed work. Again, the Carrier points out that Carmen commonly are assigned the work of dismantling cars for repair. The disputed work, however, is cutting up cars for scrap and saving certain scrap parts. The Organization has not shown that this work historically has been performed systemwide by Carmen. The Carrier argues that instead, this Board upheld the practice of assigning such work to BRAC employes at other locations; they may, therefore, perform the work at all other points including Minot.

Finally, the Carrier contends that the Clerks and the Carmen were each performing their own work. The Clerks cut up scrap cars and saved all parts of particular types, whether or not these parts were reclaimable. The Clerks did not separate usable parts from those that later were scrapped. The Carmen then did their work: determining which parts were reclaimable and reclaiming those parts. The Carrier therefore 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 based upon the record, we must find that the Carrier violated the Agreement when it assigned the work of dismantling the freight cars and reclaiming the components from those cars to employes other than Carmen. Hence, the Claim must be sustained.

Rule 47 makes it clear that although other employes may be assigned scrapping work, reclaiming work must be assigned to Mechanics. See also Award 8281. In addition, the Organization has provided numerous affidavits making it clear that the reclamation work has always been performed by Carmen.

The Second Division, in Award 8281, held:

> "The facts are clear that useable material is being segregated in the process under consideration. While subsequent to the removing and segregation of the useable material that cars are being scrapped, carmen's work must be performed first. Removing of useable parts from the cars falls within the definition of reclaiming useable material under Rule 47.
>
> The Carrier violates the agreement when it permits other than carmen to segregate the useable material from the cars being scrapped."

Hence, this case must turn on whether the work performed by the Clerk employes consisted of the reclaiming work that, according to the Rules and previous decision of this Board, must be assigned to Carmen. An analysis of the record makes it overwhelmingly clear that, on the date in question, the BRAC employes were given the assignment of saving or salvaging certain parts of the freight cars that they were dismantling. Consequently, the Organization has met its burden of proof of a violation of the Rule, and the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1986.