Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11030
SECOND DIVISION Docket No. 9839
2-N&W-CM-'86

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated the Rules of the current Agreement and associated Rules, namely Rules 29 and 118 of the Agreement dated October 1, 1952, when employees other than Carmen performed the work of removing hopper pockets from wreck cars, at Buffalo, New York, on February 27, 1981.

2. That the Norfolk and Western Railway Company be ordered to compensate Carmen M. Durski and M. Skotnicki in the amount of three and one-half (3 1/2) hours at the time and one-half rate of pay for February 27, 1981.

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.

Carrier's Tifft Yard is located approximately 2.4 miles from its Buffalo Terminal Facility at Buffalo, New York. According to the record, Carmen are not normally assigned at the Tifft Yard, but, on occasion, are directed to perform light repairs and make inspections at the Yard.

On February 27, 1981, from approximately 10:30 AM to 2 PM, General Car Foreman D. A. Gilbert and Car Foreman R. J. Decker aided three (3) other Carmen by blocking and jacking, and by helping with the removal of hopper pockets from wreck cars on Tifft Yard's Track No. 5.

Specifically, the assistance provided by the two (2) Supervisors consisted of pulling the burned pockets from beneath the wrecked hopper cars so that the cars could be secured onto flat cars for transportation. The Carmen performed the burning and the Supervisors raised and lowered the wrecked cars by using a Hoesch crane. The Hoesch crane was not regularly assigned to the Tifft Yard and, allegedly, the Carmen who were present were not familiar with the operation of the crane.

A Time Claim was filed by Organization on March 30, 1981, alleging a violation of Rules 29 and 118 because the above referenced Supervisors placed blocks and jacks, and assisted in the removal of the hopper pockets. During its handling, however, the Claim was later amended to allege a violation of Rules 29 and 118 "... when employes other than Carmen performed the work of removing hopper pockets from wreck cars, at Buffalo, New York, on February 27, 1981."

The pertinent parts of the cited Rules read as follows:

"Rule 29 - Assignment of Work

None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work.

At outlying points (to be mutually agreed upon) when there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

* * *

"Rule 118 - Classification of Work

Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, ..."

The essence of Organization's Claim is that the dismantling of hopper cars is work which is reserved exclusively to the Carmen's craft. Furthermore, the Supervisors' operation of the Hoesch crane on the day in question, which was part of the dismantling work, was neither within the normal exercise of their duties, nor was it within the generally recognized exception of Rule 29 which permits Supervisors to instruct craftsmen by performing the work of the craft. Lastly, Organization also contends that the work which is involved in the instant dispute is the general type of work which has repeatedly been performed on the property by Carmen for the past 30 years.

Carrier's initial argument in this dispute is that the amended Claim "... is at variance with the claim as presented on the property." Accordingly, Carrier urges the Board to refuse to decide the merits of this dispute in accordance with the Board's long-standing policy of dismissing such amended claims (see Second Division Awards 4621 and 6610).

Without prejudice to its first contention, Carrier further argues, in the alternate, that no violation of the current Agreement has occurred in this dispute. In support of this contention, Carrier maintains that the Supervisors at the time were instructing their subordinates in line with their duties since said Supervisors were the only persons on the scene who possessed the knowledge which was necessary to safely operate the Hoesch equipment. Therefore, according to Carrier, the minimal craft work performed by the Supervisors on the day in question was in compliance with the second paragraph of Rule 29 which allows Supervisors to perform craft work "... in the exercise of their duties."

The Board has carefully read, studied and considered the complete record in this case and finds the Claim to be procedurally flawed. The Claim which has been presented to the Board is not the same Claim as was presented and argued on the property. The Parties' Agreement recognizes the difference between Supervisors performing craft work and employes other than Carmen performing craft work. Adherence to the Board's long-established policy of dismissing amended claims requires this Board to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.