Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11084
SECOND DIVISION Docket No. 11054
2-DM&IR-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
(Duluth, Missabe & Iron Range Railway Company

Dispute: Claim of Employes:

1. That the Duluth, Missabe and Iron Range Ry. Co. violated the terms of our Current Agreement, in particular, Rules 29(a), 57 and 64 when they allowed a supervisor to perform Carman's work on December 13, 1984.

2. That, accordingly, the Duluth, Missabe and Iron Range Railway Company be allowed to compensate Proctor, Minnesota Carman R. Goerts in the amount of four (4) hours' pay at the straight time rate for his rate and class.

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 Carrier at its Proctor, Minnesota Yard. On December 13, 1984, the Manager of Car Inspection and Servicing furnished air brake parts to Carmen at Proctor Yard. The Claimant was then available and qualified to perform this work. The Organization thereafter filed a Claim on the Claimant's behalf, challenging the performance of Carmen's work by a Supervisor.

The Organization asserts that the Carrier violated the current Agreement when it allowed a Supervisor to perform Carmen's work. Rule 29(a) of the Agreement provides:

> "None but mechanics or appprentices 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."

The Organization points out that the Supervisor admitted that he picked up air brake parts from the air room storehouse and delivered them to Proctor Yard; he claimed that he did so only to expedite repairs. The Organization asserts that this Board has held that expediting work does not justify allowing non-Carmen to perform Carmen's work. The Organization also contends that Item 3 of the February 21, 1984, Memorandum of Understanding states:

> "Carmen or carmen helpers are responsible for the resupply of carman work stations with freight car parts."

Moreover, Carmen may perform any work that Carmen Helpers perform, including the disputed work. The Organization argues that it would not be proper under any circumstances for the Carrier to use Supervisors to furnish parts.

Finally, the Organization asserts that although the Claimant already received regular pay for the time that the disputed work was performed, this does not preclude the Claimant from receiving compensation as a result of this Claim. The Organization argues that this Board has held when a party to a Labor Agreement violates that Agreement, it generally is subject to a penalty, such as the compensation Claim made here. The Organization therefore contends that the Claim should be sustained, and the Claimant compensated in the amount of four hours' pay at the straight time rate.

The Carrier contends that Carmen do not have the exclusive right to obtain and deliver car repair parts. The Carrier asserts that none of the Rules cited by the Organization states anything about delivering materials or that such work is reserved to Carmen.

The Carrier further argues that Item 3 of the February 21, 1984, Memorandum of Understanding does not exclusively grant the work of delivering parts to Carmen. The Carrier argues that such understanding does not add to or modify existing Agreements; this understanding was not signed by the Carrier official designated to make or change contractual Agreements. The Carrier also asserts that Item 3 does not require assignment of certain work to Carmen, but states only that it is a Carman's or Helper's responsibility to supply parts to Carman work stations. Moreover, Item 3 applies only to Carman work stations; the Carrier asserts that a Proctor Yard departure track is not a Carman work station. The Carrier further argues that the Organization obtained this "working arrangement" for the shop floor because it did not have an official Agreement on this issue before. The Carrier therefore argues that the Organization recognizes that a true Agreement on the issue does not exist.

The Carrier then argues that because there is no Rule that reserves the disputed work to Carmen, the Organization bears the burden of establishing system-wide exclusive past practice. The Carrier asserts that the Organization has failed to even bring up such past practice. Moreover, the Carrier

has shown that car repair materials historically have been transported by Store Department personnel throughout the system; at Proctor Yard, Supervisors previously have transported such materials. Finally, the Carrier contends that this Board previously has held that where there is no language in the Rules that reserve such work to Carmen, Carmen do not have an exclusive right to the work. The Carrier therefore contends that the Claim is without merit and should be denied.

This Board has reviewed all the evidence in this case and we find that there is no Rule or Agreement which states that Carmen have the exclusive right to perform the work of obtaining and delivering car repair parts to departure tracks in the Proctor Yard. As we have stated in the past, if there is not an express reference to specific work in any Agreement provision, the intent of the parties can only be ascertained by past practice, custom, and usage on the property. However, there is no evidence in the record that the work at issue has, in the past, been exclusively reserved to Carmen. In fact, the record is clear that storehouse personnel routinely transport freight car parts to other car repair areas throughout the property. It is fundamental that the Organization bears the burden of proving a violation of an alleged past practice, and the Organization in this case has not done so. Hence, the 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 3rd day of December 1986.