

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

Dispute: Claim of Disputes:

1. That under the current Agreement, especially Rules I., II., 5-F-1., the Consolidated Rail Corporation improperly assigns others, including Carmen to perform the following work, which is Electricians' work.

(a) Inspect the storage batteries of cabooses, their wiring, place batteries on charge by making the necessary electrical connections to them and operating the charges. To remove and/or replace batteries as necessary making any and all electrical connections required.

(b) Inspect electrical lighting system of cabooses, including lights, wiring, switches, repairs, replace lights.

(c) Inspect caboose electric alternators, their mountings, their belts, replace belts, adjust tension, other service.

(d) Maintain records, work reports, sign for, all the aforementioned work.

(e) Particularly, the Consolidated Rail Corporation improperly assigned Carmen to perform the work mentioned in (a), and (b) and (c) above, as follows:

01-06-83 - 11:00 PM to 07:00 AM

Cabooses 21287
21049
21312

01-07-83 - 11:00 PM to 07:00 AM

Cabooses 23019
21072
21552
23375

01-08-83 - 11:00 PM to 07:00 AM

Cabooses 21072
23110
21646

01-10-83 - 11:00 PM to 07:00 AM

Cabooses 21159

01-11-83 - 11:00 PM to 07:00 AM

Cabooses 24001
24502
24044
23148

01-13-83 - 11:00 PM to 07:00 AM

Cabooses 22930

01-14-83 - 11:00 PM to 07:00 AM

Cabooses 23578
21048
21715

01-18-83 - 11:00 PM to 07:00 AM

Cabooses 23043
23010
23648

01-19-83 - 11:00 PM to 07:00 AM

Cabooses 24040
21548 (Charged in yard)

01-21-83 - 11:00 PM to 07:00 AM

Cabooses 23200
21779
21619
21038
24535
22909
23800

01-22-83 - 11:00 PM to 07:00 AM

Cabooses 22894
23087
22884
24040
23240

01-22-83 - 11:00 PM to 07:00 AM

Cabooses 21784

2. That accordingly the Consolidated Rail Corporation should be ordered to compensate Caboose Track Electricians Mario Ciprioni, Gerald Dare and Don Van Hoesen, an additional amount computed by multiplying the number of man-hours it pays others to perform the aforementioned work by time and one-half the applicable electricians' rate of the Claimants, each day it assigns the aforementioned work to others, beginning 60 calendar days before the date of this letter (claim), and continuously thereafter, including the aforelisted dates, as long as the Carrier assigns the aforementioned work to others; said total to be divided equally among them, in order to make them whole.

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 third party in interest, the Brotherhood Railway Carmen of the United States and Canada and the Transport Workers Union of America were advised of the pendency of this case. The Brotherhood Railway Carmen chose to file a Submission with the Division, the Transport Workers Union chose not to file a Submission with the Division.

Claims were submitted by the Organization alleging that work accruing exclusively to its craft had been performed by members of the Carmen craft. The three claimants were track Electricians. One of these worked 7:00 AM - 3:00 AM, rest days of Saturday and Sunday; another 3:00 PM - 11:00 PM, rest days of Thursday and Friday; and the third worked relief for these two positions with relief day on Wednesday. As can be seen by the assignments there

are periods of time at the Selkirk facility in which there are no Electricians on duty.

The Carrier contends that Carmen performed certain work "such as repairing marker lights battery connections and changing batteries, on cabin cars." It denies that the Carmen perform any work exclusively reserved to Electricians in the Organization's Schedule Agreement.

Although the Scope Agreement lists many specific tasks that are exclusively reserved to the Electrical craft, the Organization has not shown to this Board any provision whereby the type of work claimed is exclusively reserved. The Organization submitted many resolved claims which they state shows that the practice in the past has been to assign this work to the Electrical Craft.

The Carrier contends that Classification of Work Rules from the Carmen's and the Organization's Agreements control. These Rules state:

Electrician

"Except as otherwise determined by a joint jurisdiction committee, it is further understood and agreed in the application of this Electricians' Classification of work that any work specified herein which is being performed on the property of any former component railroad by employees other than Electricians may continue to be performed by such other employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included within this Electrician's Classification of Work which is being performed on the property of any former component railroad by Electricians will not be removed from such Electricians at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement."

Carmen

"Except as otherwise determined by a joint jurisdiction committee, it is further understood and agreed in the application of this Carmen's Classification of Work that any work specified herein which is being performed on the property of any former component railroad by employees other than Carmen may continue to be performed by such other employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included within this Carmen's Classification of Work

which is being performed on the property of any former component railroad by Carmen will not be removed from such Carmen at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement."

As can be seen by comparison of the two classification Rules, they are identical except for the name of the crafts. The assertion is made that the Carmen had historically performed this work, along with Electricians, therefore there is no Rule violation.

The Carrier answered the issue of the submitted Claims by addressing each of these and pointing out that only two of these Claims concern cabooses. Two Claims over a multi-year period will not suffice to show the degree of past practice necessary to establish exclusivity.

The Organization would have the Board place the burden of proof on the Carrier who is in control of the necessary elements, if there are any, to develop the facts. However, the burden is on the Claimants to create a prima facie case. When making a serious Claim as work jurisdiction this initial burden cannot rightfully be placed on the Carrier.

As can be seen in part one of the Claim, caboose numbers are stated for a series of days and the Board must infer that by implication violations of paragraphs (a) through (e) are alleged to have occurred on each of the cabooses on each of the stated days. Generalities of this sort do not frame the Claim in a manner specific enough to permit the kind of analysis necessary for decision.


The Claim must be specific enough to allow the Carrier to know what is properly alleged so that it can respond with a defense if one exists. A Claimant cannot allege broad violations of the Agreement and expect the Carrier in its answer to develop the Claimant's case. The Claim herein does not meet this degree of specificity. Because of this the Board will 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 18th day of November 1987.

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