Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12312
SECOND DIVISION Docket No. 12326
92-2-91-2-137

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Norfolk Southern Railway Company
(Southern Railway Company)

STATEMENT OF CLAIM:

1. That the Carrier violated the controlling Agreement when work belonging to the Carmen's Craft was improperly assigned to employes other than Carmen at Charleston, South Carolina on March 22, 1990.

2. That accordingly, the Carrier be ordered to compensate Carman G. T. Harvey eight (8) hours pay at the rate of time and one-half.

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.

On May 17, 1990, a claim was filed by the Local Chairman at Columbia, South Carolina on grounds that Foremen allegedly violated the Agreement at Charleston, South Carolina, when they measured and inspected the ... scraper combination on flat car BN 630253... which was work which should have been done by Carmen from the overtime board. According to the claim the Carrier's officers violated Rules 42 and 132 on March 22, 1990 when they did the work at bar. These Rules, in pertinent part, read as follows:

> "Rule 42
>
> None but mechanics or student mechanics 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."

"Rule 132

Carmen's work shall consist of building, maintaining dismantling, painting, upholstering, and inspecting all passenger and freight cars."

In denying the claim, the Master Mechanic states the following:

"Carrier's General Foreman....met with the shipper prior to loading to review open top loading rules. He used shippers' measurements for pre-clearances of the load before the load was placed on BN 630258. (A Carman) and (a Car Foreman) did go to Union Pier to measure the open top load on (the car). They compared these measurements with those submitted by the shipper for clearance."

At issue in this case is whether the work at bar is "inspecting" work on this property in accordance with past practice and/or whether the specific work done by the Foremen on March 22, 1990, is work which accrues to supervision.

The Carrier argues that Foremen have "historically" measured high-wide loads on this property, that it is a practice which had been in effect "for many years" and that it is the duty of Carrier's supervisory forces "to advise shippers as to blocking, securing and measuring high-wide loads." The Carrier provides to the Organization, which is part of the record, an extensive file of statements taken at a variety of points on this property from Raleigh, N.C. to Savannah, Georgia to Decatur, Illinois to New Orleans which attest to the fact that "high-wide" loads have been measured by Foremen with or without the assistance of Carmen. This file includes some 100 statements. The Organization contests the evidentiary validity of some of these statements. It argues that some 71 of them were signed by employees working for the Norfolk and Western and not the Southern Railway (wherein this claim originated); or by employees working at points unknown to the General Chairman; or have other flaws such as being undated; that they refer only to open top loads; and so on. It is the view of the Organization, with respect to the instant narrow claim, that proof that the work was Carman's work is found in the fact that the inspection form was, in fact, signed by a Carman albeit supervision also participated in the inspection of the car on March 22, 1990, at Charleston yard. Further handling of the claim on property produced yet additional statements by the Carrier with respect to the issue of measuring "high-wide" loads. The Master Mechanic and two General Foremen at Chattanooga, Tennessee, and Mobile, Alabama, respectively, state that there is a mixed practice on this property with respect to measuring "high-wide" loads. In the Chattanooga Territory, Foremen accompany and assist Carmen "in the measuring, in most instances" of high-wide loads at Chattanooga itself, but at Sheffield, Tennessee, the measuring is done in "most" instances by Carmen, but in "many" instances Foremen will help when it is a question of "excessive dimension" loads. At Mobile, Alabama, the work is always done by Carmen with "occasional" help by Foremen.

The record sufficiently establishes by means of substantial evidence that the measuring of "high-wide" loads is a mixed practice on this property and that the work is not exclusively the purview of Carmen although the evidence shows that in most instances Carmen participate in the measuring process. In some instances, it appears they do the measuring by themselves. The Organization states that it was not aware of a mixed practice; that it considers the evidence presented by the Carrier as "self-serving"; and that the work done by the Foremen was without the "knowledge or consent" of the Organization.

As moving party to the instant claim the burden of proof lies with the Organization to show by means of substantial evidence that the work in question is exclusively reserved to members of its craft as a matter of past practice. Substantial evidence has been defined, for arbitral purposes in this industry, as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). The Organization states that it simply does not believe the statements presented by the Carrier about supervision's participation in the measurement of "high-wide" loads. Even if the Board grants the Organization's objections about some of the evidence, it must observe that there still remains some 30 highly corroborative statements which the Organizations does not contest, and which it does counter with evidentiary rebuttal, but which warrant conclusion that the position by the Carrier in this case has considerable foundation. The Board notes the argument by the Organization that the fact that the Carmen signed the inspection papers in the instant case proves their case. Such conclusion by the Organization is not consistent with the evidence provided: the evidence only proves that the Carman participated in the measuring process and, that by custom, apparently, Carmen signed the papers when such took place. There is no doubt that "inspecting" freight cars is Carmen work as outlined in Rule 132. The arbitral precedent cited by the Organization establishes that fact. The language of the Rules at bar does not address the specific issue, however, of measuring "high-wide" loads, nor does the precedent cited address such question. The record before the Board establishes that Carmen do such work, and that they often (if not always) sign the forms when such high-wide inspections are done. But the record does not establish that Carmen have done such work as a matter of exclusive purview. They have often been helped, at various locations on this property, by supervisory personnel. In effect, there is a mixed practice on this property and the Board has no alternative, in view of the evidence of record, but to so rule. The Agreement was not violated.

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 29th day of April 1992.