

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12677
Docket No. 12441
94-2-91-2-263

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division/TCU
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(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

- "1. That the St. Louis Southwestern Railway Company violated the controlling agreement, particularly Rule 34 and Article III, when Car Foreman J.W. Vailes was used to perform the duties of a carman at the facility at Pine Bluff, Arkansas.
2. That accordingly, the St. Louis Southwestern Railway Company be ordered to pay Carman H.W. Green eight (8) hours pay at the proper pro rata rate for each day from January 30, 1990 until June 21, 1990."

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 employe 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.

This dispute arises out of a claim by the Organization that the assignment of certain work from January 30, 1990, until June 21, 1990, belongs to the Carman's craft historically and by agreement.

Rule 34-1 is relevant to this Claim and it states:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per the special rules of

each craft except foreman at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees 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."

It is the position of the Organization that the controlling agreement was violated when a foreman, was used to perform the duties of material expediter. This job was held by Carman H.L. Ashcraft until Bulletin No. 13 was issued. Bulletin No. 13 abolished sixty-five (65) Carman positions thereby furloughing H.W. Green, Claimant.

The Organization attempts to establish that the work of Material Expediter has over the years been the work of the Carmen's Craft through several statements from members stating they either worked the Material Expediter's job or knew someone who did.

The Organization argues that a Car Foreman or Supervisor belongs to a completely different craft, and on this property the foremen and supervisors are organized; that any time any employee performs the work of another craft he is in violation of their agreement; and that Rule 34-1 provides that a supervisor or a car foreman may only perform Carmen duties where Carmen are not employed. This point still employed approximately 150 Carmen and numerous car foremen during the period of time this claim covers.

The Organization states that in the instant dispute, the car foreman performed Carmen's work when the Carman was not present, and the only reason he was not present was due to the Carrier's issuing Bulletin No. 13; and, that time, Carrier made the decision to furlough Carmen and allow the Car Foreman to remain and perform the Carmen's contractually agreed to duties.

It is the Carrier's position that the Foreman is assigned at Car Heavy Maintenance Plant as Departmental Car Foreman whose duties have in past and presently involve overseeing material acquisition.

It is the position of the Carrier that Rule 34 and Addendum No. 2, Article III were not violated as alleged since the work in question is not included in Rule 71 - Classification of Work; and that since the work has not been contracted exclusively to employees represented by the Carmen's Organization, it follows that other than employees of the Carmen's Craft may perform the work without violating the agreement.

The Carrier's factual argument is as follows: Seeing that work is properly and timely completed and that sufficient material is on the job site have always been the Supervisor's responsibility; this is accomplished by utilizing the employees under his supervision, which may include delegating the work of ordering certain material needed for project cars, and cars that have been involved in accidents; and there are no provisions in the agreement that give Carmen the exclusive right to this type of work and nothing in the agreement prohibits or restricts a supervisor from reading blueprints or ordering material in carrying out his duties.

Further, Carrier states that reading of blueprints is a requirement for craftsmen, supervisors, General Foremen and Plant Managers. Material ordering is done by craftsmen, supervisors, clerks and General Foremen. Therefore, the Carrier concludes that the work in question does not belong to the Carmen's craft historically or by agreement as alleged by the Organization.

The Board has reviewed the record. It notes that statements furnished by six (6) employees allege that reading blueprints and requisitioning material was performed exclusively by them. The Carrier has not denied that Carmen have performed this work in the past but has denied that the work was performed exclusively by Carmen. Also, the Organization has offered no evidence to support such a claim of exclusivity.

It has been settled beyond question in a number of awards of this Board that in order to establish exclusive rights to particular work by past practice, the petitioner has the burden of proving that the work involved has been performed by the petitioning organization historically and customarily, system-wide. The Carmen, therefore, have the burden of proving that carmen have been the only craft on the St. Louis Southwestern Railway Company that have read blueprints or ordered material in connection with repairing freight cars.

The only evidence presented by the Organization were job bulletins posted in 1989 and 1990 and several statements from members of the Carmen's craft stating they either worked the Material Expediter's job or knew someone who did. This is not proof of historical practice. And, this Board has held that bulletins do not determine exclusivity (Second Division Award 7378).

As the Organization failed to meet its burden of proof, this claim must be denied.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin / lu
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.