Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12776
Docket No. 12690
94-2-93-2-80

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen -
(A Division of TCIU
(
(Norfolk Southern Railway Company
((Southern Railway Company)

STATEMENT OF CLAIM:

"1. That the Norfolk-Southern Railway Company violated the current controlling Agreement when employees other than Carmen were assigned to assemble ten (10) sections of heavy duty steel shelving beginning on March 16, 1992, at Hayne Car Shop, Spartanburg, South Carolina.

2. That accordingly, the Norfolk Southern Railway Company now be ordered to compensate Maintenance Carmen B. Lynn and L. W. Horton eight (8) hours and thirty (30) minutes each at the Rate of Pay of $14.59 per hours, for a total of seventeen (17) hours."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 International Brotherhood of Electrical Workers were advised of the pendency of this case and filed a Submission with the Division.

The complained of work involved the assembly of ten sections of prefabricated steel shelving to be used as storage of electrical equipment in the electricians' work area of Carrier's Hayne Shop. Carrier contends, inter alia, that the assembly of the shelving involved a simple task, that required neither special training nor special tools, and did not take over two hours per shift per employee, and, therefore, it could be assigned to any Shop Craft employee, by the terms of the revised Incidental Work Rules of the November 27, 1991, Imposed Agreement.

The application of the revised Incidental Work Rule of the November 27, 1991, Imposed Agreement has been exhaustively reviewed in Awards 2 through 13 of Public Law Board No. 5479. [1] In Award 2 of PLB 5479 it was stated:

> "Notwithstanding the foregoing, Carrier asserts that it is privileged to assign the work of changing filters to Carmen-Painters in accordance with Article V - Incidental Work Rule, of the July 31, 1992 Imposed Agreement. Herein lies the true dispute before this Board, which, it is believed is a matter of first impression. As such, considerable inquiry is necessary into background factors.
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> The July 31, 1992 Imposed Agreement was the end product of a protracted round of National negotiations involving most of the railroad industry, but not the IAM&AW. When the parties were unable to reach agreement, President Bush convened Presidential Emergency Board 219 (PEB 219). PEB 219, among its many recommendations, suggested changes to the 1970 Incidental Work Rule, to which the International Brotherhood of Electrical Workers (IBEW), International Association of Machinists and Aerospace Workers (IAM&AW), the Brotherhood of Railway Carmen (BRC), and the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (IBB&B) are parties. PEB 219's recommendations were:

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[1]1 The "Imposed Agreement" involved in PLB 5479 was the IAM Agreement dated July 31, 1992, which occurred because the IAM had its case considered by PEB 220, while the Carmen's organization was involved in the proceedings before PEB 219. PEB 220 found that it could not justify allowing the machinists craft to deviate from the PEB 219 pattern, thus for all practical purposes the November 27, 1991 Agreement and the July 31, 1992 Agreements are the same.

'(1) The coverage of the rule be expanded to include all Shop Craft employees and the back shops. (2) "Incidental Work" be redefined to include simple tasks that require neither special training nor special tools. (3) The Carriers be allowed to assign such simple tasks to any craft employee capable of performing them for a maximum of two hours per work day, such hours not to be considered when determining what constitutes a "preponderant part of the assignment." '

Following a strike, Congress enacted Public Law 102-29, which had the effect of imposing the recommendations of PEB 219, subject to clarification and modification by a Special Board. The only relevant clarification or modification made by the Special Board was the confirmation that each employee was allowed to perform up to two hours of simple tasks per shift. Subsequently, the parties were unable to agree upon contract language to implement Public Law 102-29, and requested the Public Law Board to choose between the proposed terms. The final language of the Incidental Work Rules, as decided by the Special Board, is as follows:

'ARTICLE V - INCIDENTAL WORK RULE

Section 1

The coverage of the Incidental Work Rule is expanded to include all shop craft employees represented by the organization party hereto and shall read as follows:

Where a shop craft employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work or scope rule of another craft or crafts, such shop craft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment.

Work shall be regarded as "incidental" when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a "preponderant part of the assignment."

If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed to continue with the work assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.

Section 2

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

Section 3

> This Article shall be come effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized representative on or before such effective date.'

The IAM&AW was not a party to PEB 219 or the subsequently enacted Public Law 102-29. Presidential Emergency Board 220 (PEB 220), which did involve the IAM&AW, however, noted the Incidental Work Rule which evolved from PEB 219 and found that it could not "justify allowing the machinists craft to deviate from the PEB 219 pattern." Consequently, PEB 220 recommended the adoption of the new Incidental Work Rule as developed by PEB 219 and the Special Board.

PEB 219 described the history of the Incidental Work Rule and, *in doing so, explained the reasons for* the changes it recommended. The original rule was imposed by Congress in 1970 (Public Law 91-226) and permitted certain simple tasks traditionally performed by members of one Craft to be performed by members of another Craft at running repair locations which are not designated as outlying points. In later years, the Carriers proposed the concept of the "composite mechanic" who would be able to perform the work of all Shop Crafts. With regard to the Carriers' proposal before PEB 219, the Board wrote:

> 'The Carriers' current proposal - rejected out of hand by the Shop Crafts - is to adopt an intercraft work rule authorizing carriers to assign mechanical or shop work to members of the crafts who are capable of performing it, without regard to classification or assignment of work rules. The current rule, according to the Carriers, suffers from two significant limitations: it does not apply to the major repair shops and it is inapplicable to many simple tasks that, although not "incidental" under the rule, could easily be performed by members of any craft. Included among such tasks, according to the Carriers, are various kinds of preparatory work for repair jobs such as loosening a bolt to remove a pipe or disconnecting a hose or electrical leads.

Additionally, tasks such as inspections, bench reclamation work, changeouts of various pumps, radiators, power assemblies, locomotive generators, and the like, are simple and can be performed by members of any craft. Many of these tasks, according to the Carriers, require no more than the removal and replacement of old parts.

It is wasteful of time and personnel, the Carriers contend, to require two or three mechanics to make a simple repair, the need for which is discovered by another mechanic during a routine inspection. Most such repairs - like replacing a light bulb, changing a brake shoe, tightening a hose, fixing an air leak - require no special training, tools or skill and could readily be performed by the person who does the initial inspection.

The Shop Crafts view the Carriers' proposal as another version of their "composite mechanic" proposal of prior years. This Board should reject the request, the Organizations affirm, because: (1) there is no hard evidence that attempts by carriers to pursue the matter locally, as recommended by Emergency Board 211, have been rebuked; and (2) the Carriers have failed, as they did in 1986, to demonstrate a substantial savings would be achieved.

At least part of the Carriers' case is based on a 1988 study by Bongarten Associates of locomotive servicing on the Burlington Northern Railroad. The Organizations have responded to this study in their Rebuttal Submission. After considering these documents and related testimony, we are not convinced that the Bongarten study was broad enough to reliably reflect the cost savings which could be achieved by granting the Carriers' proposal in full. Nevertheless, we are persuaded that the time has come to eliminate some of the restrictions which unnecessarily add time, costs and delays to the accomplishment of shop craft work.'

It is clear from this explanation, and from the language of the current rule, that three substantive changes were made. First, the rule was made applicable to all shop craft employees. Second, it was also made applicable in back shops. Third, the range of work that can be performed by employees of other crafts was expanded from the historical definition of incidental work to include simple tasks requiring neither special training nor special tools, even though such tasks are not incidental to another task. A maximum of two hours per employee was imposed on this third change in the rule.

It is the third change which is in dispute in this case. Under the prior rule, a mechanic was permitted to perform the work of another craft only when such work, in some way, related to the principal task being performed. It is clear that the new rule eliminated the requirement that the work be related to the principal task. If this Board were to accept the argument advanced by both the IAM&AW and the Carmen (as well as the other Shop Craft Organizations which have filed third party submissions in related disputes before this Board) that the simple tasks must still be related to the principal work assignment, then nothing would have been added by the inclusion of the provision:

> '**In addition to the above**, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a "preponderant part of the assignment."'
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> (Emphasis added.)

The only reading that the Board can give to this provision is that there is a second condition whereby mechanics are permitted to perform the work of another craft, **in addition to the** traditional incidental work they previously could be required to perform, before the rule was amended. The only basis for concluding there is a limitation, as argued by the IAM&AW and the other Shop Craft Organizations, is the fact that the rule is still called the "Incidental Work Rule." The clear and unambiguous language of the rule, however, shows that the title of the rule does not fully describe its breadth. The Board, however, must be governed by the text of the rule and not by its name.

The Agreement imposed by the Special Board redefined the term "incidental work" by adding the phrase "and shall include simple tasks that require neither special training nor special tools" after the list of tasks which would be regarded as "incidental." If IAM&AW's arguments (which the other Shop Craft Organizations embrace) were correct, this would have been sufficient and the above quoted paragraph would have been unnecessary. But that paragraph is there and it must have a separate and distinct meaning. Furthermore, the last sentence of that paragraph shows that this work is not to be counted as either incidental work or the main work assignment when counting hours for determining what constitutes a preponderant part of the assignment.

Thus, this Board must reach the conclusion that simple tasks outside the scope of a particular Shop Craft Agreement, taking less than two hours per employee, may be required of a Shop Craft employee.

In addition to the time limitation, PEB 219 recommended, and the Imposed Agreement limited "simple tasks" to those "that require neither special training nor special tools." These are the only standards set by the Agreement, and must be the standards followed by this Board in judging this claim.

First of all, the only evidence regarding the time spent by the Carmen-Painters in changing the filters is the General Foreman's statement that each worked 55 minutes on the task. The only evidence to the contrary are statements by Machinists asserting that such work generally takes between two and three hours. There is no other evidence contradicting the General Foreman's statement as to how long it actually took to complete the task on the date of claim. The Board must conclude, therefore, that the Organization has not met its burden of proving that the task actually took more than two hours on the date of claim.

The Boards next inquiry is whether or not the task required the use of special tools. This term is not defined by either PEB 219 or the Imposed Agreement. In a November 10, 1993 letter to General Chairman J. R. Duncan, IAM&AW President Directing General Chairman Robert Reynolds wrote:

'My statement that: "Machinists' work requiring special tools such as calipers, feeler gauges, micrometers and other gauging and measuring tools and devices should not be considered simple tasks ╔" was for example purposes only and was certainly not to be considered as inclusive when identifying "special tools" used by Machinists' performing Machinists work.'

The Board is inclined to agree with this statement, and the examples given by Reynolds should not be taken as an inclusive list. Based on Reynolds' statement, as well as the Board's knowledge of the industry, we will attempt to create a **broad guideline** of what might be a special tool. It is impossible to list all examples of special tools, and they most certainly will vary from craft to craft. Generally speaking, a special tool will be one which is not normally found in the tool box or at the work bench of the employee who is assigned to perform the task. "Special tools" should not include simple, common tools, such as wrenches, screwdrivers, simple drills, pliers, hammers, saws, pry bars, etc. Frequently, a tool will come with a piece of equipment or machinery, or is listed in a catalog or service manual by unique part number. If that tool is nothing more than a variation of a simple tool, such as a specially sized or shaped socket wrench or screwdriver, etc., it will not be considered a special tool. The tool should be unique to the task and particular craft, and not universal to all Shop Crafts, to be considered as a "special tool."

Special training may be a bit harder to define. Generally, it is training designed to teach a particular skill, which may or may not include the use of special tools. It is not intended to include learning to perform simple tasks that require only a brief period of instruction, nor would it include discussing safe work practices connected with the task being assigned.

> The Board's review of this record indicates that the Carmen-Painters were required to perform a task which required neither special training nor special tools. To answer a further argument raised by the Organization, the fact that it took two employees to perform the task did not remove the task from the definition of "simple tasks." Many simple tasks may require more than one person to perform, possibly due to the weight, size or awkwardness of a piece of equipment. For instance one employee may be holding something in place while another secures it. Because more than one employee may be used in this type of activity does not change the complexity of the work."

Applying the facts of the instant case to the above, it is unchallenged that the work of assembling shelving was a simple task that did not require special tools, and there is no showing that the electricians doing the work did so more than two hours per day. Accordingly, the Board must conclude that it was not a violation of the Carmen's Agreement to have the work performed by other Shop Craft employees.

The Claim is without merit. It will be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of November 1994.