

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12859
Docket No. 12446
95-2-91-2-257

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

Parties to Dispute: (Brotherhood Railway Carmen - Division of TCU
(
(CSX Transportation, Inc. (former
(Chesapeake & Ohio Railway Company)

Statement of Claim:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Carman Helper J. Martin (hereinafter referred to as "claimant") and the provisions of Rules 11 and 156 of the controlling Agreement, when on April 16, 17, 18 and 19, 1990, the carrier failed to call the claimant to work overtime in the Fabrication Shop and worked bona fide Carmen on Carman Helpers' positions.
2. Accordingly, the claimant is entitled to be compensated twenty-eight (28) hours pay at the applicable time and one-half rate for said violation."

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.

The Organization states that on April 16, 17, 18, and 19, 1990, the Carrier worked bonafide Carmen in the Fabrication Shop on Carman Helpers' positions on an overtime basis thereby violating the provisions of Rules 11 and 156 of the Shop Crafts Agreement by utilizing bonafide Carmen to perform Carman Helpers' work. In support of its position, the Organization directs the Board's attention to Rules 11 and 156 of the Agreement which state in pertinent part:

"Rule 11 -- Effective June 1, 1923.

* * *

(3) There will be an overtime call list (or call board) established for the respective crafts or classes at the various shops...."

"Rule 156--

(a) Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, car oilers and packers, stock keepers (car department), operators of bolt threaders, nut tappers, drill presses and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers' duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds, remove and apply emery wheels, true emery wheels and grind stones, lace belting, and oil shafting and other machinery; and all other work generally recognized as carmen's helpers' work, shall be classed as helpers.

(b) Carmen helpers will help carmen and carmen apprentices to same extent as helpers help mechanics and apprentices in other departments.

(c) They will do other work assigned to them by their foreman, but not carmen's or apprentices' work.

UNDERSTANDING--Negotiated February 9-22, 1922

Scaling rust and removing paint will be included under this rule as Helpers' Work. Steam and air hose repairing will be included under this rule as Helpers' Work. Rebrassing of cars in connection with oilers' duties refers to work performed in Transportation Yards."

In furtherance of its position, the Organization states that the Carrier cannot escape its obligation by virtue of the fact that the Carmen were paid at the Fabrication Machine Operator's rate and that the work therefore belongs to Carmen.

It is the Carrier's position that the provisions of the Agreement were not violated. It states that it was required to work employees beyond their regular tours of duty at the overtime rate of pay to meet production demands during April 1990 and thereby utilized the service of three Carmen during the four days in question. The Carrier stated that the work claimed by the Organization is not mentioned in Rule 156 and that the Organization failed to demonstrate Carmen Helper exclusive rights in support of its claim; and that no evidence was presented by the Organization on the property which showed a violation of Rule 11 which pertains to distributing overtime on an equitable basis.

This Board reviewed the claim and is compelled to deny it. The Carrier stated that the Carmen performed Fabrication Machine Operator's work. Nothing in the record disputed or rebutted this claim. Rule 156 does not include such work; nor does it include "pinning and feeding material to the machines" as mentioned by the Organization in the claim presented. The burden of proof is on the Organization to show that Carmen Helpers have exclusive rights to such work either by Agreement or past practice. The Organization failed to meet this burden. This Board relies on Second Division Award 12039 wherein it was held that:

"It goes without saying that, in order to prevail in a Claim like this, the Organization must show either that the Agreement specifically reserves the work to its members or that the work has been performed exclusively by its members throughout an extended period of time. See Second Division Awards 11533 and 11535. Absent such a showing here, this Claim must be denied."

Even if the Organization could establish that the work claimed belonged to Carmen Helpers by a specific Agreement provision or systemic practice, the Agreement's construction and numerous Awards from this Board support a premise that the journeyman mechanic (Carman) is "master of the Craft" and as such, may be assigned to perform all the work including work assigned to Helpers. See Second Division Award 2959.

In accordance with this Board's findings, above, the Organization's allegation of a Rule 11 violation is moot.

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 April 1995.