Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13244
Docket No. 13180-T
98-2-96-2-83

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
(
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc., (hereinafter referred to as 'carrier') violated the controlling Shop Crafts Agreement specifically Rule 154 (a) and (b), when the carrier assigned boilermakers to work exclusively reserved to the carman craft.

2. Accordingly, the carrier be instructed to pay carman J. M. Reynolds, ID #624455, (Hereinafter referred to as 'claimant') four hours at the applicable carman overtime 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 were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim arose at the Huntington Locomotive Shop because the Carrier assigned one of its Boilermakers to cut and splice the bottom of the rear cab door of Locomotive 6066, repair the door's hinges and reapply the door. The Organization contends that the Carrier violated Rule 154 - Classification of Work because this work has historically been performed by Carmen.

This claim is one of several before the Board involving a third party issue with one or more Shop Craft Unions, and the application of Section 1, Article V - Incidental Work Rule, dated November 27, 1991 ("The Imposed Agreement"). Accordingly, certain comments are necessary in order to place this case as well as others that follow in its proper context.

The current Incidental Work Rule (the "Rule") revised the 1970 Rule and came about as a result of Presidential Emergency Board 219 ("PEB 219") recommendations. PEB 219, when it addressed changes to the 1970 Rule, in relevant part recommended the following:

> "(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.'"

Thus, in sum, PEB 219 made it clear that intercraft work jurisdiction boundaries were expanded to permit any shop craft employee to perform tasks which did not require

special training or special tools. Subsequently, a Special Board finalized the current Rule:

"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."

It is readily apparent from a review of the events and history that finally resulted in the current Rule that the PEB and the Special Board intended to "eliminate some of the restrictions which unnecessarily add time, costs and delays to the accomplishment of shop craft work."

The new Rule made three substantive changes to the 1970 Rule. First, it now covered all Shop Craft employees, including the back shops. Second, the scope of incidental work was expanded to include "simple tasks" which require neither special training nor special tools, even if these tasks are not incidental to another task. Thus, the range of work that may be assigned to employees of another craft was significantly broadened. Third, "simple tasks" could be performed for a maximum of two hours per shift. Accordingly, because the Rule now includes "simple tasks" and it states that "simple tasks may be assigned to any craft employee capable of performing them" it is clear that these simple tasks may be assigned to any Shop Craft employee, limited to a maximum of two hours per shift.

In this case, the evidence shows that the tasks performed by the Boilermakers were reserved to the Carman Craft. Indeed, the Carrier, on the property recognized this

fact. In this respect, the Board notes, among other documents, a statement by one of the Carrier's supervisors dated July 10, 1995, which states that Carmen had performed this work in the past "exclusively."

Nonetheless, the issue is whether the Carrier could assign the task pursuant to Article V of the Imposed Agreement. The Carrier's basic argument is that the work was a "simple task" as contemplated by Article V, taking less than two hours to complete.

Accordingly, in view of the preceding, the threshold issue is what constitutes a simple task as contemplated by Section 1. The Board carefully reviewed the arbitral authorities relied upon and cited by both parties. Based on the results of this examination as well as a review of the PEB 219 recommendation, we conclude that four factors must be present and control whether an item of work may properly be defined as a simple task. In this respect, Public Law Board No. 3139, Award 142 held as follows:

1. The term "simple" means that the work must be unadulterated, unblended and uncomplicated.

2. The work must not require the use of any special tool.

3. The work must not require any special training.

4. Craft workers, other than laborers, must be capable of easily and efficiently completing the work with satisfactory results.

The Board adopts the reasoning of Award 8, Public Law Board No. 5479 when it, in pertinent part, stated:

> "Carrier asserts that it was privileged to assign this work to a Carman pursuant to Article V of the July 31, 1992 Imposed Agreement. (Article V, Incidental Work Rule, has been extensively discussed in Award 2 of this Board, issued this date. It is incorporated into this Award by reference.) The Board does not agree. The Incidental Work Rule, as modified by the Imposed Agreement, does not permit a Carrier to assign 'simple tasks' to an employee of another Craft when such work requires

the use of special training or special tools, because special training and special tools remove the work from the category of a 'simple task.'

Welding is work that most certainly requires special training and special tools. It is not a simple task. And while Carmen, and for that matter other Crafts, as well as Machinists may perform welding in the particular work of their own Crafts, this fact is not license or privilege for a Carrier to have them do welding work in a different Craft under the revised Incidental Work Rule. If it were, for example, then any Shop Craft employee capable of performing a specialized work function applicable to the work of more than one Craft, such as welding, could be used as a 'composite mechanic' in all Crafts, something objected to by the Organizations before PEB 219, something that PEB 219 did not embrace, and something that was not specifically provided in the Imposed Agreement.

Accordingly, the Board concludes that Carrier violated the Agreement when it required a Carman to perform welding repairs on the limit switch actuator on a wheel mounting press, because the work was not a simple task, and required special skills and special tools."

With respect to the damages issue, the Carrier established that the work was performed in no more than two hours. The general position of the Division, absent Rule support otherwise, has been that pay for work not actually performed is limited to the straight time or pro rata rate of pay. Accordingly, the Claimant will be paid for two hours of work at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of March 1998.