Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13246
Docket No. 13184-T
98-2-96-2-87

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 D.D. Icenhower, ID #624787, (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 dispute arose because the Carrier assigned two Boilermakers to weld the front coupler pocket to the face plate on Locomotive CSXT 8181 at the Huntington, West Virginia, Locomotive Shop. An arc welder was used to perform the welding work.

The Organization contends that the disputed work is reserved to the Carman Craft pursuant to its Classification of Work Rule 154(a) and (b) and that Carmen have historically performed the contested work.

The Carrier, for its part, contends that the claim should be denied because the Organization failed to request a time study pursuant to Article V - Section 1 - Work Rule of the Imposed Agreement dated November 27, 1991. Without prejudice to its position with respect to a time study, it contends that the welding work was incidental to the primary work of applying the face plates to the locomotive and because the disputed work was completed in 45 minutes and no special training or special tools were required, the work could properly be considered as a "simple task" as contemplated by the Incidental Work Rule, which reads as follows:

"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 rules 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 or 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 the Article is intended to restrict any of the existing rights of a carrier.

Section 3

This Article shall become effective ten (10) days after the date of this Imposed Agreement except on such carriers as may elect to preserve

existing rules or practices and so notify the authorized employee representative on or before such effective date."

The Board finds no merit concerning the Carrier's procedural argument that the Organization failed to request a time study as shown by the clear language of the relevant part of Section 1 of the Incidental Work Rule which reads:

"... 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" *(Emphasis added)*

With respect to the merits, we conclude that the disputed work is properly work reserved to the Carmen Craft. This finding is supported by the on-property record as verified by one of the Carrier's Foremen when he responded to a question as to who performed this work in the past and whether it was exclusively done by Carmen by writing, "Carmen, yes" next to the question itself.

The Board carefully studied and analyzed the various arbitral holdings relied upon by the parties. We find Public Law Board No. 5479, Award 8 involving this Carrier and the Machinists Union directly on point to the essential facts of this case. That Board found in relevant part as follows:

"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* Organization before PEB 219, something that PEB 219 did not embrace, and something that was not specifically provided in the Imposed Agreement."

The Board notes our holding here is given further substance in that the Carrier, in a letter to "all Carmen" stated in pertinent part "This is to remind and inform you that if you have not attended welding school you cannot work or bid a position in the shop."

With respect to the amount of damages, the Board follows many prior Awards of the Division which have held that pay for work not actually performed is limited to the straight time or pro rata rate of pay. Accordingly, the Claimant is awarded four hours pay at the pro rata rate.

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.