Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13795
Docket No. 13655
04-2-02-2-14

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division
(Transportation Communications International Union
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(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. The Delaware and Hudson Railway Company (Division of CP Rail System) violated the terms of our current agreement, in particular Rule 43.2, when they failed to call Carmen M. J. Loveland and W. Himes to perform work that is reserved to the Carman Craft by agreement.

2. That, accordingly, the Delaware and Hudson Railway Company, be ordered to compensate Carmen M. J. Loveland and W. Himes in the amount of 7.5 hours each, at the overtime rate. This is the amount they would have earned had the carrier complied with the terms of our agreement."

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.

On May 24, 2001, Unit NS 8833 was in the diesel facility for repairs. The work was performed by two Machinists. By letter dated June 8, 2001, the Local Chairman of the Carmen submitted a time claim on behalf of the Claimants in this case for 7.5 hours each at the time and one-half rate on the premise that the work performed by the Machinists rightly belonged to the Carmen craft.

The Organization argues the Carrier violated Rule 43.2 of the Agreement when they assigned the Machinists to perform work that belonged to the Carmen craft. It cites the section of the rule that provides: "Carman's work shall consist of . . . repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards."

The Organization maintains it was never aware of Machinists performing work that belonged to the Carmen craft. It insists if it had been aware, it would have filed a time claim. It contends the Rule cited by the Carrier to justify their awarding of the work to the Machinists, Rule 44.2, is a general Rule. The Organization insists that Rule 43.2 of the Carmen's Agreement is a specific Rule and is enforceable over the general Rule in all cases. Regardless of that fact, the Organization claims the Carrier cannot make Agreements with other crafts in contradiction of specific Rules and then argue that the work is covered under their Agreement.

The Organization disputes the Carrier's claim that the work involved fell under the "incidental work" Rule. It contends the Machinists worked at the job for over seven hours, well beyond the two hours referenced in the incidental Rule provision. It insists the work involved does not fall under the definition of a simple task. Therefore, the Organization says, the simple task Rule is not applicable.

The Carrier argues the work in question has been performed by Machinists at Binghamton since CP's purchase of the D&H. It contends this practice has been in place for the past 30 years. It maintains this was supported by the D&H Labor

Relations Officer, who worked as a Machinist and Mechanical Manager during this period of time. It says because the Car Department and the Locomotive Department at Binghamton in many cases have performed this work side by side, it contests any assertion by the Organization that it was not fully aware of the practice. The Carrier argues that at no time did the Carmen file a time claim over the work being done by the Machinists.

The Carrier insists that even if the Organization is correct and the work belongs to the Carmen, the work involved would fall under Rule 24 of the Agreement. They point out that the Rule permits shop employees in other crafts to perform the work of other crafts as long as "it does not comprise a preponderant part of the total amount of work involved in the assignment," and constitutes "a simple task that does not require special training or special tools." The Carrier contends the performance of such "incidental work" does not violate the Agreement.

The Carrier also states that the work involved is arguably covered by the Agreement between the Carrier and IAM&AW.

The Board reviewed the evidence presented in this case carefully and finds the claim cannot be sustained on the evidence presented.

The Carrier maintains throughout their Submission that the work historically has been performed by the Machinists. The Organization was unable to demonstrate that the work performed did not fall under Rule 24. There was no evidence of the time it took to perform the total repair as opposed to any work performed on the "pilot."

It is on this basis that the Board concludes the Organization did not meet its burden of proof.

AWARD

Claim denied.

ORDER

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 27th day of April 2004.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION
ORGANIZATION MEMBER'S DISSENT
AWARD No. – DOCKET No. 13655
Referee Carol Zamperini

The Neutral is in error when a denial award was rendered in this case. The Neutral has determined that the Carrier maintains through their submission that the work historically has been performed by Machinists.

However, this does not support the decision to deny this claim. We have specific rule support concerning pilot work. No less that twelve (12) Carmen provided statements that Machinists did not perform this work in the past. The Machinist Rule does not mention pilot work, in retrospect the Carmen Agreement does.

The Carrier claims that they would prove that Machinist's performed this work in the past by securing a statement or arrange for a meeting with Machinist Mulroy. **The Organization had no objection to this arrangement, however the Carrier never provided this so-called "evidence".**

The Board then states that the Organization was unable to demonstrate that the work performed did not fall under Rule 24 (Incidental Work Rule) and that there was no evidence of the time it took to perform the total repair, as opposed to any work performed on the pilot.

The Organization's claim specifically referenced what work was performed on the pilot, how long it took and what days that it occurred on. The Machinists and the Foreman involved signed a statement that they did perform the work on the pilot and this was made part of the record.

Second Division Award 10099 is directly on point with this case. "Absent any rule to the contrary, the assignment of work to the craft who exclusive jurisdiction is recognized, is no trivial manner". Further, Second Division Award 10055 clearly states that "it is also well established that the provision of the agreement shall prevail and that past practices does not estop the Carrier or its employees from enforcing a contractual provision at any time".

The Organization specifically provided that it was Carmen's work and provided several letters to support our position. The Neutral, for whatever reason, chose to rule for the Carrier based on an incidental work rule that has no bearing on the case. This is irresponsible. Therefore, we do not consider this case to hold any precedential value.

Alexander M. Novakovic
Labor Member