Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13818
Docket No. 13659
05-2-02-2-19

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. That in violation of the current Agreement, Rules 26, 76, 98 and Appendices "L" and "G-1" in particular, the Burlington Northern/Santa Fe Railroad Company abolished the crane positions of Crane Operators Jim Cassiday, Robert Mathes, Ron Boone, Jackie DeFrates, John Carl, Kyle Harris and Scott Gustafson and reassigned the operation of these overhead cab operated cranes, which had now been converted to operate from the cab to radio control from the ground, to all shop craft personnel.

2. That because of the violation of the Agreement Rules 26, 76, 98 and appencix "l" the Burlinton Northern/Santa Fe Railroad Company be directed to compensate Crane Operators Cassiday, Mathes, Boone, Carl, DeFrates, Harris and Gustafson at the pro-rata rate of pay for a minus forty (-40) ton crane operator for eight (8) hours per day on a continuous basis beginning on December 17, 1999 until the dispute is satisfactorily settled and these positions are returned to the Electrical Craft.

3. In addition, and in the event the Board should deny the claim, that Crane Operators Cassiday, Mathes, Boone, Carl, DeFrates, Harris and Gustafson be afforded the provisions of

Agreement Appendix G-1 due to the loss of compensation of these Crane Operators because of the technological changes made in the operation of these cranes."

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.

The Carrier operates a Diesel Locomotive Repair Facility in West Burlington, Iowa. Historically cranes are used to move heavy parts used in the maintenance of locomotives. These cranes are used both in removing parts from locomotives and in moving the replacement parts onto locomotives.

For years the Carrier used under forty (40) ton cranes at the facility from an overhead control booth. The cranes were operated by Electrical Workers who climbed a ladder and entered a cage at the top of the crane above the platform. They were guided in the operations by the craft person removing and installing the parts on the locomotive. More recently, the Carrier concluded that it made better sense to operate the cranes from a remote control on the shop floor. As a result, the positions of those who had operated the cranes were abolished and the workers who were changing parts on the locomotives were assigned to operate the cranes.

The Organization filed a claim on behalf of the above named Employees maintaining that the Carrier violated the Agreement when they eliminated the crane positions.

The Organization argues that the Carrier violated Rules 26, 76 and 98 as well as Appendices L and G-1 when it abolished the Claimants' positions and assigned the operation of various cranes to employees in other crafts. They cite a continuous violation from December 17, 1999, in the amount of eight (8) hours at the pro-rata rate of pay for each Claimant for each day the Claimants have been denied pay and operation of the minus forty (-40) ton overhead cranes.

They argue the abolishment and/or subsequent bumping of the Claimants resulted in the Claimants receiving a rate of pay below that of a crane operator. They point out that the Claimants were forced to take apprenticeships. They cite Rule 76 in support of their assertion that the Company is precluded from removing the Claimants from these positions, particularly that part reading: "Electricians work shall include the operation of electric cranes of 40-ton capacity or over . . .regardless of method of operation. . ."

They also cite Rule 26 that provides that the position of crane operator shall be assigned to Electrical Workers based on seniority. They say both rules clearly assign the operation of electric cranes to the Electrical Craft Crane Operators.

The Organization also asserts that the intent of Rule 98 was to preserve to employees pre-existing rights accrued by the covered Agreements as they existed under similar rules in effect on the individual railroads prior to the mergers.

In addition, they contend the Electrical Craft Crane Operators have operated these cranes since the opening of the facility in 1919. They insist the Agreement assures that this work which was performed by Electrical Craft Crane Operators long before the 1970 Northlines merger would remain the work of that craft and class.

They dispute the Carrier's assertion that the operation of the subject cranes is incidental. Moreover they deny it can be classified as a simple task. They say the cranes are operated continuously eight (8) hour per day; forty (40) hours per week.

Moreover, they contend the training necessary to operate these cranes remove them from consideration as a simple task. They assert that Electrical Craft

Crane Operators were required to complete a forty (40) hour training course before being qualified to operate these cranes. After the reassignment of the cranes to all craft employees, a one (1) hour Computer Based Training course is required as well as on-the-job training by the Claimants. They accuse the Carrier of reducing the amount of training so that they could claim the work fell into the simple task category. Regardless, they say, it is specific training for a specific job.

They dismiss Second Division Award No. 12980 as support for the Carrier's position. They argue that in that case the cranes were only operated sporadically and then by an Electrician and not by a Crane Operator who was operating the crane in a full-time bid position. They quote Neutral Peterson who opined in that Opinion, "Further, the Organization has not shown that the operation of the crane at issue involved special training. . ." In addition, they submit, the training to operate the crane was implemented in 1994 long after the July 31, 1992 Imposed Agreement.

They argue that the subject cranes are in and of themselves a "special tool" designed to perform a specific task. They say that while various other crafts have operated smaller jib cranes the cranes subject in this dispute are much more complicated and difficult to operate.

They insist the change in operation of the crane from strictly cab operated to both cab operated and radio controlled, is clearly a technological change in the operation of the cranes. Therefore, they assert the Claimants are covered under Appendix G-1 of the September 25, 1964, National Mediation Agreement between the parties, therefore entitled to the protective benefits outlined in the provision.

The Company argues that the Organization has failed to carry its burden of proving that the Carrier violated the Agreement. They cite a long line of Awards that have held that the Organization cannot establish an exclusive systemwide right to operate cranes on the Burlington Northern and Santa Fe Railway. In addition, they contend that even if the Organization could demonstrate an exclusive right to operate cage controlled cranes, the conversion of the West Burlington cranes to remote control takes them out of the Organization's exclusive control. Moreover, they maintain the Organization would also have to demonstrate that use of the remote control cranes would not fall under the simple task/incidental work rule

incorporated into the Agreements of the Electricians, Machinists and Sheet Metal Workers.

The Carrier disputes the Organization's contention that one of the Rules violated by the Carrier is Rule 26. To the contrary, the Carrier insists that the rule is a seniority rule and not a classification rule. They say numerous awards have rejected the Organization's contention.

They contend the same results have been achieved when the Organization has claimed a violation under Rules 76 and 98. They further point out that many of the denial Awards were rendered before 1991 and 1992 before the expanded Incidental Work Rule.

They insist the Organization has failed to establish that they had the exclusive right to operate cranes on the former Chicago, Burlington and Quincy Railroad. They cite Second Division Award No. 11469, Neutral Marty E. Zusman, which held that the Organization failed to establish they had an exclusive right on that property. They cite other awards denying the Organization the exclusive right to operate cranes.

Furthermore, they argue, arbitration Awards have already concluded that crane operation by remote control is a simple task. They reference several Awards from Public Law Board No. 5479 in support of its contention.

Finally, the Carrier contests the Organization's argument that the conversion from the overhead crane operation to the remote control operation is a technological change as defined in Appendix G-1 of the Agreement. To this end, they assert, the Organization is attempting to secure protective payments for the Claimants. However, the Carrier cites Special Board of Adjustment Awards that have held that the conversion of overhead cab operation of cranes to pendant or remote control operation is not a technological change.

As to damages, the Carrier submits that none of the Claimants lost work. They either displaced to other positions with the Carrier or they were placed in the Electricians' Apprenticeship program. Therefore, they maintain damages are not appropriate.

The Board appreciates the frustration which arises when a craft loses positions. However, the Board has no right to restore such positions or to compensate displaced employees, if the Carrier has complied with the Agreement and/or acted within its retained managerial rights.

In dealing with the last issue raised by the Organization, we do not believe the conversion of the overhead crane operation to the remote control operation is a technological change as anticipated by the parties when they agreed to Appendix G-1. Remote controls have been widely used for decades. They merely allow the operation of the same equipment to be controlled from a location other than at the cage. Therefore, the Board cannot agree that the Claimant's are entitled to protective pay.

Additionally, the Board does not believe the conversion from overhead control to radio control constitutes a technological change as anticipated by the parties. In this regard, this Board is persuaded by the history within the industry as well as the nature of the work involved. We simply do not agree that the method by which the crane is controlled constitutes a significant technological change.

Furthermore, while the crane may be used frequently during the day, there was no proof that any one individual used the crane for more than two hours. Also, the Board concurs with the rulings of other Boards that the task of using a crane is a simple task and incidental to the work performed by other crafts. It is the type of work anticipated by the parties when they agreed to the Incidental Work Rule.

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 28th day of January 2005.