Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 26900
THIRD DIVISION Docket No. MW-26543
88-3-85-3-287

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Bridge and Building employes instead of laborers at the Barboursville Reclamation Plant to perform sandblasting work in the Barboursville Reclamation Plant beginning May 17, 1984 (System File C-TC-2330/MG-4716).

(2) Because of the aforesaid violation, Reclamation Plant Laborer D. D. Cardwell shall be allowed pay for an equal number of hours expended by Bridge and Building Department employes performing sandblasting work in the Barboursville Reclamation Plant beginning May 17, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

At the time this dispute arose, Claimant held seniority as a Laborer at the Carrier's Barboursville Reclamation Plant. This dispute concerns the assignment of certain sandblasting work to B&B employees rather than laborers concerning two large bridge beams which the Carrier asserts due to size and shape, could not be transported to the existing sandblasting shed for sandblasting.

The Organization asserts that sandblasting has always been performed at the Barboursville Reclamation Plant by the Labor Gang rather than the B&B Gang irrespective of the size, weight and location of the work. The Carrier argues that no rule grants such work exclusively to the Labor Gang and, alternatively, no systemwide past practice has been demonstrated to require a sustaining award.

Rule 66 states:

> "(a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the Railway. Classification of employees and classification of work, as has been established in the past, is recognized.
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> (c) In carrying out the principles of Paragraph (a), bridge and structures forces will perform the work to which they are entitled under the rules of this agreement in connection with the construction, maintenance, and/or removal of bridges, tunnels, culverts, piers, wharves, turntables, scales, platforms, walks, right of way fences, signs, and similar buildings or structures, except where such work is performed by other employees under other agreements in accordance with the rules of such agreements or past practice in the allocation of such work between the different crafts, including work performed by shopmen in connection with the maintenance of shops, enginehouses, and other facilities within shop limits and shop work done at Barboursville Reclamation Plant and at other points in connection with maintenance of way and structures tools, equipment, and materials. Mechanics engaged in such work (except those engaged in painting) will be classified as carpenters or masons, according to work. Mechanics engaged in painting will be classified as painters or sign and signal painter, according to work. ***"

It is well settled that the burden is on the Organization to demonstrate that the Agreement grants to the Claimants the exclusive right to perform the work at issue or, in the absence of such an exclusive grant, to demonstrate that the work has been historically, customarily and exclusively performed by employees covered by the Agreement. Our examination of the record leads us to conclude that the Organization has not met its burden in either regard.

The Organization has not shown the existence of a specific rule that grants the work at issue exclusively to the Labor Gang. Indeed, under Rule 66(a), the B&B forces appear to also have jurisdiction over the work at issue, i.e., to "perform the work ... in connection with the construction, maintenance, and/or removal of bridges ..." thereby indicating a lack of exclusivity by the Labor Gang. We do not find that the language relied upon by the Organization in the exception proviso of Rule 66(c) clearly covers the sandblasting work at issue for us to conclude that the work is specifically, by rule, given to the Labor Gang on an exclusive basis. First, the specific reference to the Barboursville Reclamation Plant in the exception language does not clearly refer to the sandblasting work at issue but refers to "shop work done ... in connection with maintenance of way and structures tools, equipment, and materials." Second, the phrase "except where such work is performed ... in accordance with ... past practice in the allocation of such work between the different crafts" does not refer only to the Barboursville Reclamation Plant. Under ordinary principles of contract construction, seeing that the parties elsewhere in Rule 66 made reference to the Barboursville Reclamation Plant, had the parties intended that the past practice language meant a practice at Barboursville in particular as opposed to a general systemwide practice, they would have similarly made that specific reference to Barboursville when the past practice language was addressed. Therefore, a fair reading of that provision is that a systemwide showing is necessary for the past practice exception to apply and, as noted below, such a showing has not been made in this case. For the same reason, the phrase in Rule 66(a) "as has been established in the past" does not change the result. This case concerns the work at Barboursville and there has been no showing in this record that the language at issue concerns Barboursville in particular as opposed to other locations where employes are covered by the Agreement.

Thus, in the absence of an exclusive rule granting the work at issue to the Labor Gang, it is necessary for the Organization to demonstrate that the work has been performed in the past exclusively by the Labor Gang on a systemwide basis. Giving the Organization the benefit of the doubt that it has demonstrated the existence of a past practice, the Organization's showing in this case is that the work has been performed exclusively by the Labor Gang at Barboursville. However, such a showing has not been made on a systemwide basis as is required.

Since the Organization has failed to meet its burden, we must deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1988.