

PUBLIC LAW BOARD NO. 6636

In the Matter of Arbitration:

SPRINGFIELD TERMINAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Case Nos. 4

Award No. 3

Public Law Board No. 6636:

S. A. Hurlburt, Jr., Member designated by BMWE

T. W. McNulty, Member designated by Springfield Terminal Railway Company

B. C. Deinhardt, Esq., Neutral Member and Chair appointed by National
Mediation Board

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Shop Laborers Fred Puralo and Kevin Collins to paint walls on the west end of the East Deerfield Engine House, East Deerfield, MA on August 30 and 31, September 1, 2, 3, 4, and 5, 1998 instead of assigning B&B Foreman Manuel Furtado (System File MW-98-44).

(2) As a consequence of the violation referred to in Part (1) above, B&B Foreman Furtado shall be allowed fifty-six (56) hours of pay at the B&B foreman straight time rate."

the other craft's contract and argued successfully that the work was not incidental to the work of the other craft or to a clean, safe, and operational facility.

The Board held in that case that the Machinists Incidental Work Rule [comparable in effect to that involved here] "may not be held to extend to the performance of work that has by rule or historical past practice been reserved to employees in which agreement language such as that contained in Rule 34 is not present." Further, the Board held that "it would have to be recognized, as the BMWWE argues, that construction of an office in a building is not incidental work, or work that could be readily considered as incidental to 'a clean, safe and operational facility.'" Finally, the Board found that the BMWWE had presented sufficient evidence to establish "that the work of remodeling and construction of offices on the property has traditionally and historically been work assigned to B&B Mechanics."

According to the Organization, that case is precedent on this property and is determinative of the issues before us.

The Carrier disputes the Organization's claim that the BMWWE contract gives the Organization exclusive right to the work in question. Further, the Carrier asserts that the work was performed in compliance with the Laborers' Work Rule. In addition, the Carrier states that "this type of work has been done by Mechanical Department employees for at least 15 years at this location." The Carrier provided statements from employees to support this contention.

The Carrier presents a number of prior Awards to support its position. One case that involved this Carrier and the Brotherhood of Locomotive Engineers found that the Carrier could assign work to machinists pursuant to Rule 34 Incidental Work of their Agreement, language comparable to that involved here, even when the Organization claimed the work under a clause that provided that "Hostlers will perform any and all service associated with the movement of locomotives within engine territory." Public Law Board 6145, Award No. 35 (2000).

FINDINGS

We find that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and the parties were given due notice of the hearing. Since the Statement of Claim suggested that the Laborers might have third party interest in the claim, that organization was notified of the dispute and given an opportunity to file written submissions and to attend the Board hearing. No response was received and the organization did not appear at the hearing.

It is the Organization's burden to prove by substantial evidence that the Carrier has violated the Agreement. We do not believe that burden has been met.

We do not agree with the Organization's claim that its collective bargaining agreement gives it sole jurisdiction over the work described as the "primary duties" of the B&B Mechanics. That language is merely descriptive and creates certain seniority classes. The Organization relies on Third Division Awards 4800, 7052 and 17093 for the proposition that similarly descriptive language in seniority rules serves to reserve work to those for whom the Agreement is made. In those cases from 1950, 1955 and 1969, respectively, the Carrier assigned work to an intra-union classification (e.g. carpenter rather than steel worker, carpenter rather than mason, carpenter rather than painter) in circumstances where no contractual justification or guidance existed other than the description of the work in the one contract that covered both classifications.

Contrary to the Organization's interpretation, we find that these cases do not control where, as here, there is language in more than one craft's agreement that can be read to assign work to that craft. In Award 4800, the Board specifically observed that had there been an overlapping of duties, mere reference to the seniority provision would not have sufficed. We also note that the Organization's interpretation would be contrary to that of the Neutral in PLB 6145, Award 35.

That said, neither do we find that the Carrier is free completely to disregard that language and assign work unfettered by any consideration of the agreement with the BMW. Rather, we find that if the Carrier has a reasonable basis for assigning the work to employees other than those represented by the Organization, then there is no violation of the BMW agreement. Such a reasonable basis might rest on past practice or on language in other contracts.

Applying these principles to the case before us, we find that the Organization did have some claim to the work of painting the walls on the west end of the East Deerfield Engine House, as it constituted the maintenance of buildings or other structures. By the terms of the BMW agreement, this claim was not exclusive, however. Both the Carrier and the Organization presented evidence of the work being done in the past by both B&B employees and Laborers and others in the Mechanical Department. The Carrier also argues, and we agree, that the Laborers contract, which requires Laborers to perform "any and all services associated with the general maintenance and servicing of ...locomotive servicing facilities," permits the assignment to Laborers of painting work in an engine repair facility where locomotives are housed and serviced.

We do not accept the Organization's argument that the BMW contract describing the B&B employees' primary duties as including the "maintenance" of buildings gives them more rights than the Laborers' rights (and obligation) under Rule 2.1 Work Function to perform any and all services associated with the general maintenance of locomotive servicing facilities. An engine house where locomotives are housed and serviced is reasonably considered to be a locomotive servicing facility¹ and painting is reasonably considered to be general maintenance. Thus the Carrier had a reasonable basis for assigning the work to the Laborers.

¹ Further we note that the Organization did not raise on the property the argument that the engine house was not a locomotive servicing facility.

Contrary to the assertion of the Organization, we do not find PLB 5606, Award 11 to be controlling. First, in that case there was no evidence of a past practice of crafts other than B&B employees doing the work in question where here there is. Further, in that case, the Organization disputed the Carrier's argument that the work was associated with Machinist work and incidental to a safe, clean and operational facility and thus properly assigned to Machinists under their Incidental Work Rule. Here, as noted above, we find that the work was properly performed under Rule 2.1 of the Laborers agreement. Finally, we do not find support for that Board's argument that another craft's Incidental Work Rule must be totally disregarded if there is no corresponding rule in the BMW contract.

Rather, we find that PLB 6145, Award 35, is more persuasive. In that case, work was claimed by the Brotherhood of Locomotive Engineers under the language of their Hostlers agreement that "Hostlers will perform any and all service associated with the movement of locomotives within engine house territory." Instead, the Carrier assigned the work to the Machinists under their Incidental Work Rule requiring machinists to "perform any and all other services associated with the repair and maintenance of machines and locomotives and incidental to a clean, safe, and operational facility." The Organization argued "that the Incidental Work Rule has no application to hostler services or work, and argues that it does not override its agreement rules with the Carrier." The Board concluded,

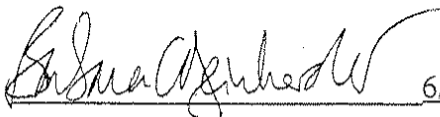
In the opinion of the Board, to hold that the rules cited by the Organization give Hostlers an absolute right to perform all hostling work would require an unreasonable and harsh interpretation of the cited rules as well as a disregard of the rights of the shop craft mechanics and laborers to also perform hostling services or work. The rules cited must be read in concert with one another, both as concerns the rights of other employees and as between the separate Hostler rules themselves. In doing so, it seem to the Board that the rules support a finding that it was not intended that a hostler would have a unilateral or unfettered right to all hostler work... Under the

circumstances, the Board is not persuaded that employees holding seniority as hostlers have an exclusive right to perform all hostler work...

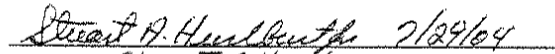
We concur with the reasoning in that case and find that the mechanics here did not have an exclusive right to the work; that the Laborers agreement contains language that permits and obligates them to perform this work as assigned; and that the record in this case contains evidence of a past practice that a number of crafts have performed this work. Under all these circumstances, we find that the Carrier did not violate the contract in assigning work to the Laborers.

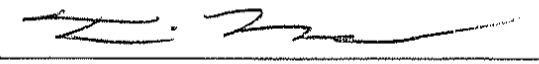
CLAIM DENIED.

So ordered.

 6/26/04

B. C. Deinhardt
Neutral Member and Chair

 2/29/04
~~D. D. Bartholomay~~
Labor Member


T. W. McNulty
Carrier Member