

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Terminal Railway Company violated Rules 71 and 73 of the current working Agreement when on April 24, 1987 they assigned Mike Rocke and Roy Pennington, who are not Carmen, to take the Cline Truck and rerailed Cars TTPX 82521 and TTPX 81310 flat load of lumber that were derailed at Mill Street Yard.

2. That because of such violation, the Kansas City Terminal Railway Company be ordered to compensate Carmen N. J. Hayes, who was available to be called to perform the work, four (4) hours at the overtime rate of pay.

FINDINGS:

The Second 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.

As Third Party in Interest, the International Brotherhood of Firemen and Oilers was advised of the pendency of this dispute, but chose not to file a response with the Division.

A Claim for four (4) hours was filed by the Organization at the Kansas City Terminal on grounds that non-Agreement employees were used to re-rail cars. On April 24, 1987, flat loads of lumber TTPX 82521 and 81310 were rerailed at the Carrier's Mill Street Yards by a Sheet Metal Worker and a Laborer. According to the Claim such represented violation of Agreement Rules 71 and 73. The Rules at bar read as follows:

"CLASSIFICATION OF WORK
Rule 71

Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing passenger train motor cars; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing, operating punches and shears, doing shaping and forming, work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene and electric welding work generally recognized as carmen's work; and all other work now generally recognized as carmen's work."

"WRECKING CREWS
Rule 73

Regularly assigned wrecking crew will be composed of carmen and helpers.

Meals and lodging will be provided by the company while crew is on duty in wrecking service."

In support of its Claim the Organization presents a statement by one Carman working on this property that: "as long as (this Carman) worked for the K.C.T. Ry the rerailing (of) freight equipment had been Carmen's duties."

In denying the Claim the Carrier states that the rerailing of derailed equipment is not the exclusive purview of Carmen on this property although members of this craft have assisted with this type of work in the past. Correspondence by the Carrier to the Organization under date of February 29, 1988, is pertinent in this respect and is cited here for the record:

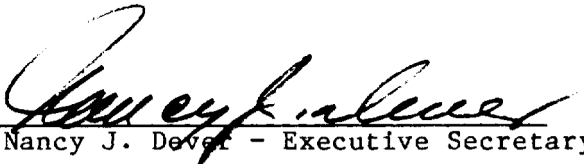
"...(the) Carrier has provided the Organization with factual figures for approximately the last 20 years wherein the mechanical department employees (a department which includes Carmen as well as other shop craft employees) re-railed approximately 20% of derailed equipment on the K.C. Terminal. Almost 80% of the derailments logged were rerailed by other than Carmen therefore refuting any claims to exclusivity."

A review of the full record in this case shows that Carmen have participated in the rerailment of equipment on this property. The same record does not support the conclusion, however, according to substantial evidence criteria, that such work was under the exclusive jurisdiction of Carmen. Substantial evidence has been defined, for arbitral purposes, as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1990.