

**Award No. 4598**

**Docket No. 4426**

**2-Sou-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier violated the controlling agreement, when on February 7 and 8, 1962, Carrier contracted, instructed and/or authorized employes of Rosenthal Metal Company to repair Southern System's automobile device cars located on siding at Chevrolet Plant, McDonough Blvd., Atlanta, Georgia, and siding at Fair Street, Atlanta, Georgia.

2. That the Carrier be ordered to discontinue these violations and pay Carman J. D. Parker, Atlanta, Georgia, 8 hours at rate of time and one-half for February 7, 1962, and 8 hours at rate of time and one-half for February 8, 1962:

**EMPLOYEES' STATEMENT OF FACTS:** The Southern Railway Co., hereinafter referred to as the carrier, maintains at Atlanta, Ga., modern facilities for the inspection, repairing and servicing of freight cars.

On February 7 and 8, 1962, employes of Rosenthal Metal Company of Atlanta, Ga. made repairs to carrier's (Southern Railway System) automobile transport cars ETTX 500039 and TTX 477136 on carrier's siding at Fair Street, Atlanta, Ga. and at Chevrolet Plant, McDonough Blvd., Atlanta, Ga. The repairs made on these two cars were as follows:

February 7, 1962—Car ETTX 500039  
Weld the tie down chain to the tie down ratchet assembly of the car.

February 8, 1962—Car TTX 477136  
Straighten and replace two safety rails on the top deck of the car.

Trailer Train Company's reporting marks and definitions of the various types of flat cars owned by Trailer Train Company and leased to various carriers.

Automobile carrying racks or superstructures are not referred to in the carmen's classification of work rule, quoted above, and identified as Rule 149, nor are they referred to anywhere in the carmen's agreement. Rule 149 became effective December 27, 1921. At that time no TTX cars had been built, nor had automobile carrying racks or superstructures been invented. TTX cars and automobile carrying racks or superstructures on flat cars have only been developed during recent years. Negotiators of the agreement could not therefore have included therein the work of modifying or repairing automobile carrying racks or superstructures mounted on TTX cars when they wrote it. Factually, it would have been impossible for them to have done so.

Furthermore, as shown herein, automobile carrying racks or superstructures mounted on leased TTX cars were placed in service on Southern only recently, in fact, in late 1960. At no time have carmen performed any work on these racks. Modification work performed by Rosenthal Metal Company and Newman Boiler and Heating Company was not work contracted by carrier to its carmen, nor was the repair work performed on the leased tri-level automobile carrying rack or superstructure mounted on car ETTX 500039 by employees of Rosenthal Metal Company on February 7, 1962, work contracted by carrier to its carmen. Nor has carrier contracted to its carmen the work of straightening and replacing safety rails which have broken loose on the top deck of the carrier-owned rack mounted on leased car RTTX 477136 and performed by employees of Rosenthal Metal Company while the car was at the plant of Chevrolet Motor Company, McDonough Boulevard, Atlanta, Ga. on February 8, 1962.

Neither claimant had any contract right to perform the repair work here claimed. There was not, therefore, any violation of the controlling agreement and under it the claim which the brotherhood here attempts to assert is without basis and should accordingly be denied.

**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 employe 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 maintains modern inspection, repair and service facilities for freight cars at Atlanta, Georgia, where the Claimant, J. D. Parker, is a regularly employed Carman.

On February 7 and 8, 1962, at the Carrier's Fair Street Siding, Atlanta, Georgia, employees of the Rosenthal Metal Company performed certain work on Carrier automobile transport cars ETTX 500039 and RTTX 477136.

The Carrier contends that the work in question was not done on the cars but on the automobile racks, which were mounted on the two cars and which were not a part of the cars.

The Organization claims that the automobile racks are integral parts of the cars and "are subject to be maintained, repaired or modified by carmen employes of the Carrier". The Carrier's action, according to the Organization, violated Rules 31, 149 and 163 of the controlling Labor Agreement.

As the Carrier failed to introduce information or evidence of its leasing arrangements with the Trailer Train Company on the property, the Board, in compliance with its practice and the pertinent regulations, could not give such evidence, when subsequently introduced into the record, any weight or consideration.

This case involves the same parties, and contains almost identical pleadings and facts as in Docket No. 4373—Award No. 4515. In that award, which sustained the claims of the Organization, the Board held, in part, as follows: "For Carrier to move its equipment in the transportation of automobiles, it needs the racks. We hold that the racks are an integral part of the car, and being Carrier's property, the right to the maintenance and repair of them comes within the Carmen's Classification of work (sic) rule."

The Board can find no reason for disagreement with Award No. 4515, therefore, it must support the Organization's claim. However, the record contains no proof of the time it took to perform the work in question, consequently, we decree that the compensation paid the Claimant for February 7 and 8, 1962, will be at the applicable pro-rata rate for the actual work time involved.

#### AWARD

Claim 1 sustained.

Claim 2 sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: William B. Jones  
Chairman

E. J. McDermott  
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December, 1964.

**DISSENT OF CARRIER MEMBERS TO AWARD 4598**

For the reasons previously set forth in our dissent to Award 4515, we dissent to the majority's decision in this case.

**P. R. Humphreys**

**F. P. Butler**

**H. F. M. Braidwood**

**H. K. Hagerman**

**W. B. Jones**