

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Current Agreement was violated during the period July 16 through July 22, 1974 when the Chesapeake and Ohio Railway permitted a Contractor (Donahue Brothers Incorporated) to bring their employees into Huntington Shop to perform Boilermakers work.
2. That accordingly the Chesapeake and Ohio Railway be ordered to compensate Boilermakers Ballengee, Humphreys, Drummond, Walker, Black, Kitchen, Browning, Frazier, Kitts, Cremeans, Davis and Shockley an equal share of the $561\frac{1}{2}$ hours worked by the Contractor, at the applicable pro rata rate.

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 waived right of appearance at hearing thereon.

The basic issue in this case involves the application of Rule 79, Classification of Work, in the current agreement. On July 6, 1974 an electric transformer owned by Asea, Incorporated was being transported on a flat car to a public utility in Ohio. Approximately two (2) miles north of Huntington, West Virginia the flat car was derailed and damage resulted to the transformer. After the derailment the transformer owner determined that certain inspection and temporary repair work had to be performed to prevent further damage to the transformer. The Owner employed an independent contractor to supervise this work. This firm, in turn, employed a local contractor to provide the workmen to perform the work. The Carrier moved the flat car and transformer to the Huntington shop where the work on the transformer was performed by the firms employed by the Owner. The Carrier's employees did not perform any of the work on the transformer. The Boilermaker Craft then filed a claim for the work performed on the transformer.

Numerous awards have held that a Carrier is not responsible for assigning work on property which it neither controls nor legally owns. This Board recognizes and adheres to this principle. In this case the Carrier had no ownership rights in the transformer. It had no right to control or determine the work performed on the transformer. In the absence of such ownership rights or the right to control the work, the Carrier did not have the legal power to assign the transformer work to its employees. Without this legal power and authority the Carrier could not violate the classification of work rule or its subcontracting agreements. The claim therefore, must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By.


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.