

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

Parties to Dispute: ( System Federation No. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That under the current Agreement the Carrier improperly permitted the use of other than Carmen (Milwaukee Train Crews) to perform Carmen's work of coupling, inspecting and testing the air brake systems on train No. 340 at Eldon, Iowa on April 6, 1977.
- (2) That accordingly the Carrier be ordered to compensate Carman P. O. Stone for 2 2/3 hours pay at the time and one half 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 employees 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.

This dispute alleges that the Carrier violated the Agreement when other than Carmen (Milwaukee Train Crews) coupled air hose, inspected and tested air brake systems on train No. 340 at Eldon, Iowa on April 6, 1977.

Carrier defends the claim on the allegation that it had no control of the work. It cites a Joint Trackage Rights Agreement which permitted the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (The Milwaukee) to use Carrier's facilities for an agreed upon fee. The Joint Line Agreement covers trackage as follows:

"Rock Island's main track between the westerly limits of Rock Island's West Davenport to Culver line used by the Milwaukee at Mile Post 211.6 located at Culver, Iowa, and Rock Island-Milwaukee joint trackage at Polo, Missouri, located at Rock Island's Mile Post 460.2. Said trackage shall be deemed to include all sidings, signals, interlocking devices, communication lines, and all other facilities appurtenant thereto."

The Agreement contains the following provisions:

"Should any train, locomotive or car of either party hereto be derailed or damaged while on any portion of the Joint Line the same shall be picked up and/or removed without unnecessary delay by Rock Island and the expense so incurred shall be borne by the parties hereto in accordance with provisions of Section 15 hereof, provided, however, that the employees of Milwaukee shall be permitted to rerail locomotives or cars in its train where a wrecking derrick is not required.

Milwaukee may set out bad order cars on any available track, provided that Milwaukee shall exercise diligence in setting out such cars so as to maintain unimpaired train operation over the Joint Line. Cars shall not be set out on tracks used to pass trains when other tracks are available and the cars may be safely moved to such other tracks. Milwaukee shall repair and pick up such bad order cars with reasonable dispatch. When cars are set out under the provisions of this paragraph, the crew making the setout will notify the Rock Island dispatcher of the location and number of cars set out." (Emphasis added)

Joint Trackage Agreements have prevailed in the Railroad Industry almost from its conception and are authorized by the Interstate Commerce Commission. This Board has long held that the Agreement, unless specifically so providing, contains no restriction against the making of Joint Trackage Agreements. As stated in our Award 6742, "If we were to place a restriction on such joint track use agreement, we would be adding a provision to this Agreement. We have no authority to do so."

We find that the work here involved would be subject to the Agreement or Agreements between the Milwaukee Road and its employees. The Carrier has no control of the work in this instance and the Agreement with its employees is not applicable.

Second Division Awards 4169 and 6742 deal with like issues and reach the same conclusion.

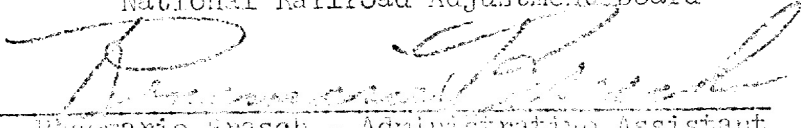
A W A R D

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 4th day of January, 1979.