

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 76, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereafter referred to as the Carrier, did unjustly deprive Carmen G. Hammer and D. Decker, hereinafter known as the Claimants, of the work of dismantling freight cars for scrap, thereby unjustly depriving each of the Claimants seventy-two hours at the time and one-half rate of pay.
2. That the Carrier be ordered to compensate each of the two Claimants in the amount of seventy-two hours at the time and one-half 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 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.

Petitioner alleges that the Carrier used an outside contractor to dismantle freight cars for scrap, following a derailment at Canton, S.D., although such work had been previously performed by Carmen on a system-wide basis. Petitioner, accordingly, claims a violation of Rules 85 (Carmen's Classification of Work Rule); 31(a) (Seniority); 32(a) (Assignment of Work); and 33 (Assignment of Welding Work).

Carrier, on the other hand, refers to its long-standing practice to contract out work such as that involved in the instant claim; that in a prior situation, it had agreed with the Organization that "the salvaging of usable parts at a derailment would be performed by the Carmen Craft"; that the current claim did not involve a salvage operation but a scrap operation, in that the contractor was used "to cut up and load the destroyed freight

cars ... for shipment to St. Paul Store Department for disposition and sale of the scrap"; and that the cutting up of scrap car is not encompassed in the Carmen's Classification of Work Rule nor is such work reserved exclusively to Carmen.

Both parties in their Submissions and during the processing of the claim on the property referred to a prior case -- the Mina case. Carrier's position is that in the Mina case it used a contractor to salvage usable parts, which it acknowledged was Carmen's work. However, the cutting up of the cars for scrap loading, also performed by the contractor, was not considered Carmen's work and no claim was made for that work in the handling of that case.

The instant case is distinguishable, according to Carrier, in that Carmen (not the contractor) salvaged the useable parts. Unlike the Mina case, therefore, the instant claim involves only the cutting up of cars for scrap. And on that issue, Carrier submitted a list showing, over a 5-year period, that it had used contractors for cutting up for scrap, cars involved in derailments.

In sum, on the basis of the disposition of the Mina case and the Carmen's Work Classification Rule, Carrier denies that the work in question is reserved to Carmen.

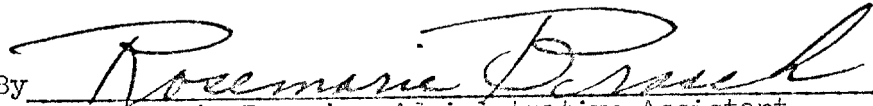
A close reading of the record supports the finding that the disputed work was not a salvage operation but a scrap process, and that the contractor was used only after members of the Carmen craft had completed the salvaging of parts operation. No probative evidence has been submitted by Petitioner that the contractor used by the Carrier performed salvage work or that cutting up of scrap is either contractually reserved to Carmen or that such work belongs to Carmen on the basis of past practice. Carrier's records and itemization of use of contractors over a 5-year period effectively refutes Petitioner's allegations. Accordingly, we will deny the claim.

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 13th day of June, 1979.