

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company violated Rules 21 and 83 of the controlling agreement when they arbitrarily assigned carmen from Subdivision No. 5 to perform work belonging to carmen painters in Subdivision No. 3 beginning April 7, 1978, Fort Worth, Texas.
2. That accordingly, the Texas and Pacific Railway Company be ordered to pay eight hours (8') at the overtime rate each day beginning April 7, 1978, and continuing until a settlement is made, and this time to be divided equally among the following painters:

L. E. Marr
W. H. Miller
G. Benavides

M. Rodriques
R. Bermejo
3. That the Texas and Pacific Railway Company violated the time limit provision of Rule 23 of the agreement when the Master Mechanic failed to respond to Local Chairman's claim of May 31, 1978, within the sixty (60) day' time limit.

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 Organization claims that Carrier violated the Agreement when it assigned Carman Subdivision No. 5 to perform work of applying with paint and decals black squares with white or yellow dots to freight cars to indicate the presence or absence of condemnable wheels in the yard at Fort Worth, Texas. The Organization asserts that under the terms of Rule 21, this work belonged to the carman painters in Subdivision No. 3. It asks that the carman painters receive eight hours at the overtime rate for each day of the violation.

Rule 21 of the Agreement contains classifications in eight Subdivisions:

"Carmen No. 1 Patternmakers
Carmen No. 2 Upholsterers
Carmen No. 3 Painters
Carmen No. 4 Consolidated with No. 5
Carmen No. 5 All other Carmen
Carmen No. 6 Apprentices
Carmen No. 7 Helpers
Carmen No. 8 Coach Cleaners"

The evidence presented establishes that Carrier was directed, pursuant to Federal Adm. Emergency Order No. 7, to identify cars equipped with certain kinds of high carbon steel freight car wheels. The order required that these cars be identified because those wheels were defective and had been partly responsible for several derailments. This identification was done with spray paint and decals. Application of the markings was done in conjunction with routine train yard inspections of the cars.

Carrier determined that the switching of the cars onto repair tracks for identification would have blocked repair tracks necessitating the cessation of normal repair operations, and caused severe delays in shipping. For this reason, Carrier decided to have carmen identify and mark the cars in the train yard in conjunction with the routine inspections carmen traditionally perform.

Rule 21 contains eight separate classifications of carmen. One of these classifications, Subdivision No. 3, is for painters only. We adhere to the view that under the terms of Rule 21, that carmen painters are entitled to protection against other carmen, as well as against other crafts. See Awards 1519, 2459, 3256, 3410 and 6231. Consistent with this view, if the cars were being stencilled under normal conditions, e.g., in the shop or on the repair track, the work would accrue to Subdivision No. 3.

However, we are persuaded that given the unusual and unique circumstances here, where the cars were scattered throughout and it would have been completely impracticable to return the cars to a bona fide repair point, Carrier was justified in handling the matter as it did. Therefore, we must conclude that the Agreement was not violated.

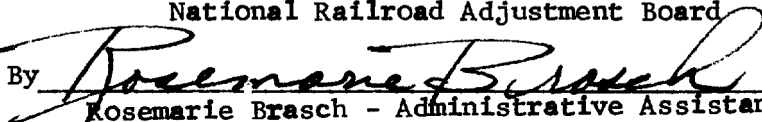
Thus, because the cars were not at a bona fide repair point and because the decision not to bring the cars to a repair point was reasonable, we will deny the claim in its entirety. We do so order.

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 3rd day of June, 1981.