

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11398  
Docket No. 11029-T  
88-2-85-2-129

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Seaboard System Railroad  
(Louisville and Nashville Railroad)

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company (formerly Louisville and Nashville Railroad Company), hereinafter referred to as the Carrier, violated the Agreement, particularly, but not limited to, Rules 104 and 30(a), when a Boilermaker was assigned to perform Carman's work at Nashville, Tennessee on January 31, February 1 and February 2, 1984.

2. And, accordingly, the Carrier should be ordered to compensate Carman D. Farthing for twelve (12) hours and Carman R. E. Sullivan for six (6) hours all at time and one-half rate as the result of said violations.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 facts of this case are set forth as follows: On January 31, February 1 and 2, 1984, a Boilermaker was assigned to assist a Machinist and an Electrician modify a wrecking outfit power car, SCL741082, which involved the replacement of an electric power plant. The wrecking outfit was a converted passenger car. It is the Organization's position that said work accrued to the Carmen's craft, since it was covered under the Carmen's Classification of Work Rule (Rule 104) and further, since Carmen had customarily performed this type of work. In support of its position, it cites Second Division Award Nos. 1269, 4256, and 9814 as controlling authority, and particularly notes that the holding in Award No. 9814, by interpretative extension applies herein. In Award No. 9814 the Board held in part:

"On this property, camp cars are not passenger or freight cars within the meaning of Rule 104, classification of work. Consequently, the work in question was not specifically reserved to carmen although it clearly would have been had it been performed at the shops in Mobile, Alabama. Nor have carmen exclusively worked on camp cars away from the shop on this property. Rather, Maintenance of Way employees have performed minor repairs on these camp cars located on the line of road for many years. In light of this, there was obviously no system-wide practice of assigning this work exclusively to carmen."

Moreover, the Organization contends that inasmuch as Carrier has not contested that the Boilermaker fabricated and welded brackets, patched a hole in the wall and patched a hole in the roof, the work accrued to the Carmen, consistent with the protective work categories of Rule 104. The initial part of this provision is referenced as follows:

"Carmen's work shall consist of building, maintaining, dismantling, painting and inspecting of all passenger and freight cars."

The Organization also charges that Carrier violated Rule 30 (Assignment of Work).

Carrier concedes that while a Boilermaker was assigned to replace the power plant, the Boilermaker assisted two other craft employees, and spent approximately 6 hours performing actual asserted protected work in 3 days. Specifically on:

January 31 - 3 hours enlarging base for new power plant  
February 1 - 1 hour welding brackets for the electrician  
February 2 - 2 hours cutting and welding for sheet metal worker on exhaust pipe and welding buffer on the roof.

It also points out that Carmen were not involved in the initial installation of the power plant in the converted car and maintains that the car could not be categorized as a passenger or freight car under the contemplated definition of Rule 104. It referenced Second Division Award Nos. 9814, 10732, 10784, 10801 as supportive precedential authority.

As an interested third party to this dispute, the International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers filed a written response, wherein the Boilermakers' Organization claimed that said work accrued by Agreement Rule to its members (Rule 70). It asserted:

"It is the position of this Organization that the Carmen's craft does not have an exclusive jurisdiction to the work in this instant claim. The work in question has clearly been work normally assigned to the Boilermakers' craft, the modification of the base for the power plant, welding brackets for the Electricians and cutting and welding for the Sheet Metal Workers Craft. The carmen are now attempting to change a well established practice by claiming exclusive jurisdiction. It is for this reason and the aforementioned reasons that your Honorable Board must deny this claim."

In our review of this case, we concur with Carrier's position. We do so for several reasons. Firstly, strict literal reading of Agreement Rule 104 clearly indicates that the work of building, maintaining and dismantling applies to all passenger and freight cars. This is explicit definitional language and it excludes a converted power support car. Secondly, our decision in Second Division Award No. 9814 noted Rule 104's application to passenger and freight cars and also noted that the work at issue was not specifically reserved to Carmen, though it would have been had it been performed at the shops in Mobile, Alabama. Of pivotal importance in that case, was our finding of non-systemwide exclusivity and the correlative situation specific finding that the work would have accrued to Carmen at Mobile. In the case at bar, there is no evidence that the disputed work was historically performed by Carmen at Nashville, Tennessee, or that members of the Carmen craft historically performed such work systemwide. In fact, the evidence shows that Carmen were not used to install the initial power plant in the converted car. Similarly, we must disagree with the Boilermakers claim of exclusivity, since their Classification of Work Rule does not provide such work protection and there is no consistent unambiguous evidence that Boilermakers were normally assigned those tasks.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1988.