

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11434
Docket No. 10943
88-2-85-2-42

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad were in violation of the Controlling Agreement, Rule 102, when they engaged the services of a private contractor to weld brackets to the bodies of cars on September 14, 1983.

2. That the Missouri Pacific Railroad be ordered to compensate Carmen R. B. Roe, D. L. Kline, and D. Martin in the amount of thirty-six (36) hours each at the pro-rata rate for September 14, 1983 for violating Rule 102 of the controlling agreement.

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 Carrier operates a train yard and repair track at North Little Rock, Arkansas. Claimants are Carmen assigned to that facility, who worked their regular shifts, from 7:00 a.m. to 3:00 p.m., on the dates at issue in this dispute.

On or about September 14, 1983, the Carrier engaged the services of a private contractor, C&W Company, to perform certain work involving three flat cars bearing a load of structural steel at North Little Rock. These cars had previously been loaded by Harris Structural Steel Corporation in New Jersey with a load of oversized steel beams. Harris, the shipper, secured the load to the cars by placing the beams on burden blocks and then using steel rods, tied down to angle braces affixed to the decks of the flat cars, to restrain the load. Harris fashioned these braces from angle iron and welded them onto the car decks.

The load of beams was ultimately destined for Gouldsboro, Louisiana, but when it arrived en route at North Little Rock it was discovered that the load had shifted, breaking the angle braces loose at their welds. The Carrier engaged C&W Company to adjust and resecure the load. After breaking the load down and readjusting it, the contractor's employees straightened the braces with torches and reaffixed them to the car decks using a portable welder. The contractor then resecured the load as before, with rods tied down to the braces. This work was performed at the Carrier's freight house at North Little Rock, not at the repair track.

The Organization claims that the work of repairing and reinstalling the braces, using torches and welders, constituted Carmen's work. The Organization contends that the contractor employed three men, each for three 12-hour days, in performing the work. It therefore filed this claim seeking a total of 108 hours' compensation for Claimants. The Carrier, on the other hand, argues that the braces were not standard or integral parts of the cars in question, but rather that their installation was an essential aspect of adjusting and resecuring the load, and therefore was not exclusively Carmen's work. In addition, while disclaiming knowledge of how much time the contractor's employees devoted to reaffixing the braces, the Carrier denies that it could have occupied three employees for 36 hours each.

It is not disputed that the braces were initially affixed to the cars by Harris Structural Steel Corporation, the shipper, specifically for securing this particular load of steel, and that the Carrier maintains the right to engage private contractors to adjust and tie down shifted loads en route on its property. But the Organization asserts that, once installed, the welded angle braces became integral parts of the Carrier's cars so that their repair and reinstallation was exclusively reserved to the Carmen's craft under the controlling Agreement.

Insofar as is pertinent here, Rule 102 of the governing Agreement defines the scope of work reserved to Carmen in the following terms:

"Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel . . .; work done with hand forges and heating torches in connection with carmen's work; . . . [and] oxyacetylene, thermit and electric welding on work generally recognized as carmen's work;"

The Organization claims that repairing the angle braces on the cars in question constituted "maintaining" those cars within the meaning of Rule 102. The Organization stresses the fact that the work involved the use of torches and electric welders, arguing that it thereby came within the explicit terminology of Rule 102 as quoted above.

However, as the Rule is written the use of torches and welders comes within the Carmen's classification of work only when it occurs on tasks that are themselves recognized to be Carmen's work. The Organization bears the burden of demonstrating that the work was exclusively reserved to its members, if it is to prevail on this claim.

The braces were neither original equipment on the cars nor were they installed by or for the Carrier as standard appurtenances. The braces were affixed to the cars by the shipper of a particular load, exclusively for the purpose of securing that load during its transit. There is no evidence that the braces were intended to be, or that they were, maintained in place for use in transporting future loads. The evidence is to the contrary. In addition, the evidence is uncontradicted that the braces broke loose as a result of the load shifting and that their reinstallation was a necessary part of the process of adjusting the load and resecuring it. The braces could not be replaced until the load was readjusted, and the load could not be resecured until the braces were replaced.

Under these circumstances, the Board must conclude that the work in question did not constitute maintenance of the Carrier's cars, within the meaning of Rule 102. It was instead an indivisible part of the loading and reloading of the cars for this particular shipment. As such, it was not exclusively Carmen's work. The braces are more appropriately viewed as part of the load in this case than as part of the cars.

The precedent cited by the Organization in support of its claim is consistent with this conclusion. In Second Division Award 4515, this Division concluded that the making of significant modifications to certain automobile carrying racks, purchased by the Carrier for mounting on its cars, was Carmen's work. But in that case the racks were major appliances, acquired by the Carrier for installation on its cars, and the Board found that the racks were essential to the Carrier's business of transporting automobiles. In this case, the angle braces were very minor additions to the cars; they were not purchased or requested by the Carrier but were put in place by the shipper; they were useful only to the shipper for that particular shipment, not to the Carrier's business in general; and the repair and replacement of the braces was an inherent aspect of adjusting the load being shipped.

Similarly, Second Division Award 7621 stands for the proposition that even temporary repairs to a carrier's cars may constitute Carmen's work. However, the repairs in that case were to the car body itself, to enable the door to be closed securely. The repair was made temporarily until the loaded car reached its destination and could be repaired properly. Since that repair was to an integral and permanent part of the car itself, it was distinguishable from this one. This case involved only a minor addition to the cars in question, originally made by the shipper for use with a single shipment, and did not involve repairs to an integral part of the cars. Therefore, Award 7621 is not controlling.

Because the work involved in this dispute did not involve the building or maintenance of the Carrier's cars as such, or any other aspect of repairs to the cars which is recognized as Carmen's work, it did not fall within Rule 102 of the controlling Agreement even though it included the use of torches and welders. Under that Rule, the use of such equipment becomes Carmen's work only when the equipment is used in conjunction with tasks that are reserved to the Carmen's craft. Accordingly, the Board must conclude that the Rule was not violated as alleged.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1988.