CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11567
Docket No. 11420
88-2-87-2-61

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore & Ohio Railroad Company knowingly violated the contractual rights of the carmen claimants herein listed. That the carrier willfully entered into an arrangement, a lease agreement with Trailer Train Corporation (TTX) to allow TTX to lease two (2) repair tracks at Port Covington, Baltimore Terminal, Baltimore, Maryland, on the property of the Baltimore & Ohio Railroad Company. That this leasing agreement effectively removed all major, minor, preventive, and periodic repairs to TOFC type cars away from Claimants and into the hands of nonrailroad employes of Rail America, Inc. That claimants were monetarily as well as contractually damaged by this stripping away of their contractual and historic right to perform these repairs. The claimants, as well as the organization, have been deprived of their contractual rights under the provisions of Rule 138 of the Agreement between the Baltimore & Ohio Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, as amended.

2. That accordingly, Carmen Claimants R. Smith, F. Lavicka, C. Thrappas, C. Moore, W. Schultheis, M. Lusco, W. Szymanski, D. Barkman, J. Bricker, H. Fletcher, W. Hicks and J. Gaskins be awarded the renumeration as specified below.

Date of Violation	Claimant (s)	Hours Claimed	Amount
February 20, 1986	R. Smith, F. Lavicka	Eight (8) time and one-half	$158.40
February 12, 1986	C. Thrappas, C. Moore, W. Schultheis	Eight (8) time and one-half	$158.40
February 11, 1986	M. Lusco	Eight (8) time and one-half	$158.40
February 7, 1986	W. Szymanski	Eight (8) time and one-half	$158.40
February 7, 1986	D. Barkman	Eight (8) time and one-half	$158.40

January 29, 1986	J. Bricker	Eight (8) time and one-half	$158.40
February 12, 1986	J. Bricker	Eight (8) time and one-half	$158.40
January 29, 1986	H. Fletcher	Eight (8) time and one-half	$158.40
January 29, 1986	W. Hicks	Eight (8) time and one-half	$105.60
January 29, 1986	J. Gaskins	Eight (8) time and one-half	$105.60

This renumeration sought account Carrier consciously and in concert with TTX, deviously removing the repair of TOFC rail cars from the historic and contractual hands of the Claimants heretofore listed on the dates heretofore listed and assigning same to nonrailroad employes of Rail America, Inc.

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 employes 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 filed Claim on March 5, 1986 alleging Carrier violation of Rule 138 of the Agreement. In the facts of this case, the Organization contests the Carrier's right to lease its property to Rail America/TTX at Port Covington, Baltimore, Maryland for the purpose of TTX repairing its own cars on Carrier's leased property. It argues that the performance of work within the Classification of Work Rule by those foreign to the Agreement on Carrier's property is violative of the Agreement. It argues that AAR Interchange Rules govern routine running repairs performed on cars owned by foreign railroads. The Organization alleges that the Claimants were not used to perform Carmen's work on TTX cars needing the same routine repairs.

The Carrier denies any Agreement violation. It argues that Carmen do not have any exclusive contractual rights to the repair of TTX cars. It maintains that it has violated no Agreement provision in the leasing of its property to TTX which used its own employees to repair its own cars at that facility.

This Board has searched the record and Agreement for probative evidence of a Carrier violation. Although sensitive to the issues herein contested, there is no showing of Agreement language which provides the employees with the exclusive right to perform the contested work on privately owned TTX cars. There is no restrictive language in the Agreement which prohibits Carrier from leasing its property to others for the purpose herein disputed.

That the work is routinely performed on other foreign railroads under AAR Interchange Rules is not dispositive of this case. AAR Rules are not rules which are between the employees and Carrier and therefore do not restrict the Carrier's actions or guarantee employee rights.

This Board must find for the Carrier in the instant case. There is no probative evidence beyond assertion that the Carrier controlled the work or violated the Agreement. It is not contested that the work on TTX cars was done on property which was under lease to TTX. It was therefore not under the control of the Carrier. Since the repairs took place outside the Carrier's control, it was outside the Agreement Rules which protect the employees.

This finding is consistent with Second Division Award 6839. In that case the car owner (Western Fruit Express) leased facilities at the carrier's (BN) property to do its own repairs with its own employees. That Award stated in part:

> "...there can be no doubt but that the BN has every legal right to lease its facilities as it sees fit. Thus WFE, the tenant, has every right to do its work on its leased tracks."

The Board further held that:

> "It is fundamental that Rules on Seniority, Qualifications, Classification of Work and Pre-existing Rights cannot extend to and encompass work that does not belong to the BN. The rules of the BN and System Federation No. 7 Agreement apply only to work that the Carrier has to offer."

We concur with the reasoning in that Award. This Board finds nothing herein of probative evidence which would alter that conclusion. Lacking such evidence, the Claim must be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.