

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12051
Docket No. 11943-T
91-2-90-2-51

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

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Kansas City Terminal Railroad Company

STATEMENT OF CLAIM:

1. That the Kansas City Terminal Railway Company violated Rules 6, 7, 8, 9, 19 and 71 of the current agreements when they called Roundhouse Pipefitter and Welder Mike Rock to bring the wrecker to Mill St. Yard. After arriving, Mr. D. E. House, Superintendent, called Carman D. C. Wall to the site and Pipefitter Rock assisted and performed carmen's work in repairing trucks of tank car PLCX224528 placing them under the car and in essence, repaired, replaced and inspected tank car. This was on November 29, 1988. Carmen were assigned and available to perform the work in question.

2. That because of such violation, the Kansas City Terminal Railway Company be ordered to compensate Carmen N. J. Hayes and Robert Hayes in the amount of eight (8) hours each 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 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.

As Third Party in Interest, the Sheet Metal Workers International Association was advised of the pendency of this dispute and filed a Submission with the Division.

On November 28, 1988, a railroad tank car lost the "B" end set of trucks and was derailed. One of the Carrier's Superintendents directed a Pipefitter-Welder to proceed to the derailment site with a Cline truck. The Pipefitter picked up various pieces that were lost from the tank car, including the wheels, wedges and springs. He also operated the boom on the truck to

assist with placing the trucks under the tank car. The dispute here focuses on the question of whether the work performed by the Pipefitter and the Superintendent belonged to the Carmen at the Kansas City Terminal, both by the rules and past practice.

In this Claim, there are two general work functions being claimed by the Organization, the operation of the Cline truck and the work of rerailling. With respect to the driving of the Cline truck, there is no agreement provisions or past practice to support the Organization's claim. Indeed, it was never substantively refuted on the property that members of other crafts also operated the Cline truck.

With respect to the remainder of the work involved in rerailling the car, it is apparent that rerailling is Carman's work; however, it is not exclusively Carman's work. Rule 71 - Classification of Work is applicable to this Claim and it does not contain the term "rerailling." Accordingly, for the Organization to prevail in a case of this kind, because there is no evidence that it is entitled to the work by specific rule language, its claim can only rest on the last phrase of Rule 71 which reads "...and all other work now generally recognized as carmen's work." However, to meet its burden under this language, it must show an exclusive system-wide past practice, a burden it has not met. The Board also notes that past Awards have rejected the same argument on the same issue as here, i.e., that rerailling is not exclusively Carman's work (see Second Division Awards 6361, 3859, among others).

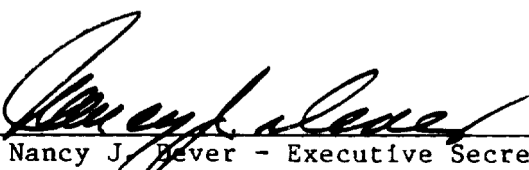
For all of the foregoing, the Claim is denied.

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 15th day of May 1991.