

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Carmen H. C. Madden and D. B. Reynolds (hereinafter referred to as "claimants") and the provisions of Rules 32 and 154 of the Controlling Agreement when on April 20, 1988 the carrier utilized the services of persons other than mechanics to do mechanic's work.

2. Accordingly, the claimants are entitled to be compensated for forty (40) hours each at the applicable Carmen's straight time rate for said violation.

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.

At its facility at Raceland, Kentucky, the Carrier undertook in early 1988 to develop a device to exert pressure on gondola floors for the purpose of assisting in spot welding during car repair. Two prototypes of the "gigs" were assembled by the Claimants in the Carrier's facility. According to the Carrier, the device was "somewhat effective" but did not produce sufficient pressure. As a result, the Carrier turned to an outside firm to manufacture and deliver a more efficient version of the device.

By contrast, the Organization contends that the device provided by the outside firm was "identical" to that previously prepared by the Claimants.

The Board finds that the Organization has not sufficiently met its burden of proof to show that the "gig" provided by the outside contractor was identical to those made by the Claimants on an experimental basis. As a result, there is clearly no proof that the manufacture of such devices accrues exclusively to the Carman craft. Directly on point are Awards 8 and 35 of Public Law Board 3781, which concern decisions to purchase equipment rather than manufacture them by Carrier forces.

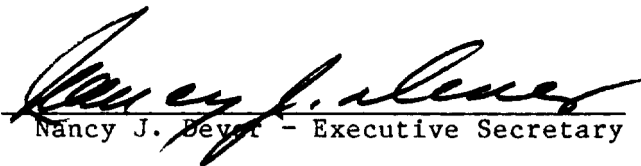
With this conclusion, the Board need not review the Carrier's jurisdictional argument that the dispute is improperly before the Board but, rather, should be addressed by Special Board of Adjustment No. 570.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.