

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

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

STATEMENT OF CLAIM:

1. That the Kansas City Terminal Railway Company violated current agreements, Rule 71, when on December 1, 1989 they allowed carmen from the Burlington Northern Railroad (Carman Gary Marshall, Leroy Riggs and Tom Hancock), Murry Yard in North Kansas City, Missouri to come on Kansas City Terminal property and repair and replace truck on tank car GATX 22299. The Burlington Northern employees arrived on December 1, 1989 at 4:20 p.m. in two Burlington Northern vehicles #5673 and 73713 and proceeded to repair GATX 22299, replacing truck side frame at L-3 roller bearing.

2. The Local Chairman, N. J. Hayes, carman on duty December 1, 1989, asked Mr. M. R. Wenninghoff, Manager of Personnel, and General Foreman Edwards "if we carmen on Kansas City Terminal property could do the work at GATX 22299 and replace truck." Mr. Wenninghoff then asked Mr. Edwards "if their carmen could do this work." Mr. Edwards replied "Yes, we have in the past."

3. The car was on Kansas City Terminal property and not on Burlington Northern property.

4. That the Kansas City Terminal Railway Company be ordered to cease from using carmen from other railroads to perform Kansas City Terminal carmen's work and allow carmen in service on Kansas City Terminal property to perform their contractual work.

5. That the Kansas City Terminal Railroad compensate Carman D. C. Wall eight (8) hours pay at the time and one-half rate as he was available to assist Carman N. J. Hayes in repairing this car.

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 basic facts of this case are set forth as follows:

On November 28, 1989, a Burlington Northern (BN) transfer arrived at KCT Mill Street Yard to be interchanged with KCT. Said transfer was inspected by a Carrier Carman on November 29, 1989, and the Carman found tank car GATX22299 to be bad ordered on account of a defective truck side. The car was promptly set over to a maintenance of way supply track so that Burlington Northern employees could retrieve it for repairs at the home shop. A BN crew arrived on December 1, 1989, at about 4:20 P.M. with two BN trucks and said crew along with one KCT Carman repaired and replaced the truck on tank car GATX22299. The BN crew departed at 5:30 P.M.

By letter dated December 28, 1989, the Organization filed a claim wherein it charged that Carrier violated Rule 71 of the Agreement.

By letter dated February 15, 1990, the Carrier denied the claim on the grounds that GATX22299 was never accepted in interchange by the KCT. Thus the responsibility for the car still remained with Burlington Northern. However, the Carrier pointed out that because the truck side was so severely cracked, it would have been unsafe to permit the car to be moved to BN property. Instead, the car was placed on the maintenance of way track at Mill Street for the BN crew to repair.

By response dated March 16, 1990, the Organization asserted that KCT had no Agreement with BN Carman employees and, as such, KCT had no right to use BN employees. It also observed that Carman were available on December 1, 1989, and indeed capable of repairing the tank car. It further noted with respect to the interchange jurisdictional question that had BN removed the car to BN property, the instant claim would not have been filed. On this point, it wrote:

"The car was on Kansas City Terminal property and was the responsibility of the Kansas City Terminal Railroad. If the Burlington Northern had retrieved the car and taken it back to their property, then the claim would not have been filed. However, by your admission, the car was damaged to severely that repairs had to be made on M and W track at Mill Street which is Kansas City Terminal property."

The Carrier denied the claim on May 9, 1990, but noted in particular, that the severity of the break to the truck side of the car, precluded the safe removal of the car to BN property. It also disputed the Organization's contention in the initial claim letter that KCT Carman forces have previously performed this kind of repair. Specifically, it stated:

"Contrary to Mr. Hayes initial claim letter, Mr. Edwards informed me that they have not made repairs such as what was required on GATX and that they do not have the necessary equipment to safely effectuate the repairs. For your records I have enclosed a copy of the picture taken of the damage to GATX 22299."

In considering this case, the Board concurs with Carrier's position that tank car GATX22299 was not accepted in interchange and accordingly effective responsibility for the repair of the defective car rested with BN. Under such circumstances, the car could be removed to BN property for repair. However, where, in this instance, the car was repaired on KCT property by BN Car-men, the question of repair responsibility becomes less unambiguous. Since there is no clear showing that a palpable emergency existed or that the nature of the work indisputably required specialized equipment, of necessity and consistent with our holdings in Second Division Awards 6635 and 12013, we must find for the Organization.

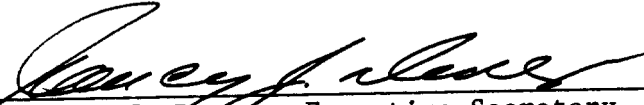
We will sustain the claim at the pro rata rate. We have no basis for entering a cease and desist order.

A W A R D

· Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.