Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12421
Docket No. 12397-T
92-3-92-2-197

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railroad Company violated the controlling Agreement when inspecting work belonging to employes of the Carmen's Craft was improperly assigned to employes other than Carmen at Hayne Car Shop, Spartanburg, South Carolina on Tuesday, April 17 and Wednesday, April 18, 1990.

2. That accordingly, the Southern Railroad Company be ordered to compensate Carman C. D. Gosnell seven (7) hours pay at the regular Carman's rate due to this 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.

As Third Party in Interest, the Transportation Communications Union was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The Organization's Submission claims that on April 17, and 18, 1990, four employees of the Storehouse Department were assigned to sit upright and inspect approximately four hundred draft gears for a representative of the Miner Draft Gear Company prior to purchase. It points out that the inspection of such gears has long been the work of Carmen Inspectors and cites work rules to buttress that claim. There is no disagreement between the parties with respect to the application of such rules and the practice on the property during regular operations. The dispute arises because of the irregular operation of selling the gears to the Miner Draft Gear Company. The Carrier maintains that on the dates under consideration, a representative from the Miner Draft Gear Company was at the Hayne Shop to look over bad order gears

that the company was purchasing and that there were no parts to be dismantled or inspected for reuse by the Carrier. It points out that the draft gears had already been inspected by a Carman/Inspector before they progressed into the Reclamation Shop. That claim is unrefuted in the record. The record reveals that the gears were sold "as is" and there was no need for further inspection by the Carrier's employees.

The Organization maintains that there were approximately four hundred gears involved and that the sales slip only accounted for two hundred sixty four gears. The inference exists that some of the gears must have been kept for reuse and that accordingly the gears were inspected and some returned on the days noted. It faults the Carrier for failing to offer any explanation as to where the other gears were used. The Carrier does not state the number of gears involved but the sales slips show a total of three hundred twelve. There is no other evidence in the record regarding the total number of gears involved other than the Organization's self serving claim of approximately four hundred and the sales slips which indicate three hundred twelve. There is no evidence that any of the gears were returned to the property. The Carrier maintains that all the gears involved were sold to the Miner Draft Gear Company. Absent any evidence to the contrary, this Board must agree with the Carrier.

Numerous decisions of this Board have accepted the Carrier's right to sell its property. After a sale the ownership of the property is vested in the purchaser. The fact that the representative from the Miner Draft Gear Company was on the property to look over and inspect bad order gears which the Company was purchasing "as is" does not violate the Rules in the Agreement which deal with inspection, dismantling, reuse, etc. The work of the new owner in accepting the purchased property could hardly be construed as work belonging to the Organization.

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 9th day of September 1992.