

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12441
Docket No. 12217
92-2-91-2-1

The Secod 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
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated the controlling agreement dated September 1, 1949, and especially Rules 30, 31, 103 and 123, as amended, when they allowed and assigned to an outside concern, Ashland Salvage Company, the job of repairing a shifted load of sheet rock on car WCRC #1102 which was shipped and in the repair track at Portsmouth, Ohio.

2. That Ashland Salvage Company sent three (3) of their employes to Portsmouth, Ohio Car Shop to repair this shifted load on September 7, 1989.

3. That the material, tools and facilities used to repair this car #1102 were Norfolk and Western tools used by carmen employed at Portsmouth, Ohio Car Shop.

4. That the Carrier in allowing strangers to come on the property and into the car shop facilities to repair this car did so willfully, falgrantly, without regard and/or consideration for their contractual obligation to the Carmen's craft at Portsmouth, Ohio and the agreements to which they are a party.

5. That because of such violations, the Norfolk and Western Railway Company be ordered to cease these types of contractual violations and compensate Carmen R. E. Bolton, G. Richard L. Nagle at the time and one-half rate of pay, five (5) and one-half (1/2) hours for September 7, 1989.

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 Claim contends that outside contractor employees were utilized by the Carrier to repair a "shifted load" of sheet rock on a freight car on the repair track at Portsmouth, Ohio. The Organization further alleges that "material, tools and facilities" of the Carrier were used for this purpose. The Organization contends that this is work which should properly be performed by members of the Carman craft.

The Carrier responds that there was no shifted load involved but rather simply the replacement of torn plastic covering the lading. The Carrier further states that Car Department materials and tools (other than use of a banding machine to splice bands) were not used by the contractor's employees.

The Claim fails to establish convincing proof of the Organization's version of what occurred. No specific evidence of repair work to the freight car was provided. There is insufficient showing that the work extended beyond replacing the plastic covering. Thus, Rule violation is not established.

The Board, having reached this conclusion, need not consider the Carrier's contention that the proper place for resolution of this matter would have been 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 30th day of September 1992.