

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12705
Docket No. 12537
94-2-92-2-55

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railroad Company and/or its corporate parent, the Norfolk Southern Corporation, violated the terms and conditions of the current Agreement on June 2, 1991, when an employee (forman) was assigned work belonging to the Carmen's craft at Lynchburg, Virginia.
2. That accordingly, the Norfolk Southern Railroad Company and/or its parent, the Norfolk Southern Corporation, be ordered to provide the following relief: that Lynchburg, Virginia, Carman E. E. Burch, Social Security No. 223-76-3011, now be compensated for five and one-half (5 1/2) hours pay at the overtime rate for 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 employe 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 American Railway and Airway Supervisors Association was advised of the pendency of this dispute but choose not to file a Submission with the Board.

There is no dispute in this record on the essential facts which form the basis of the claim. Four hopper cars were set out at Long Island, Virginia, on June 1, 1991, due to bad wheel sets.

On June 2, 1991, a Car Foreman and Student Mechanic made two trips from the Storehouse at Lynchburg, Virginia, to the site of the set out cars. They transported four pair of wheels on each trip as eight pair were needed to rewheel the hopper cars. The bad ordered wheel sets were replaced on June 3, 1991, by three carmen.

The Organization argues that the Carrier has violated Agreement and practice by assigning a Foreman to do Carmens' work. Specifically, Rule 42 specifies that none but mechanics shall do mechanics' work. Classification of work Rule 132 states that the repair of freight cars is Carmens' work. Further, Rule 145 states:

"CARMEN SENT OUT ON ROAD TO PERFORM WORK

Rule 145. When necessary to repair cars on the road or away from the shops carmen will be sent out to perform such work. Two carmen or one carmen and a student mechanic or one carmen and an experienced helper will be sent to perform such work as putting in couplers and wheels and work of similar character."

The Organization argues that in order to make the repairs Carmen were by Agreement required to pick up the wheels, move them to the point of repair as an integral part of the repair operation, as well as return the damaged wheels and complete the proper paperwork. There being no storehouse personnel at Lynchburg and Carmen on duty, the use of a Foreman to do Carmens' work was a violation of the Agreement. It also was not the practice on the property.

The Carrier denies that the disputed work is encompassed under the Rules of the Agreement. The Carrier's position in the whole of this dispute is that the work performed was the driving of a truck and delivery of materials by a Foreman. The Carrier argues that neither Agreement nor practice give Carmen the exclusive right to material delivery from the Storehouse to the site of the hopper cars.

The Board has carefully reviewed the record and finds insufficient probative evidence in support of the Claim. The Organization's central premise that loading, transporting and unloading wheels is an integral part of the repair of freight cars is not supported by specific Agreement language. In fact, the Organization must support its claim with clearly stated language or absent thereof, with probative evidence of controlling practice.

The Board finds no provision in the Agreement limiting the Carrier's actions in the manner disputed. There is no language giving Carmen the sole right of the delivery of materials to the site of repair or the exclusive use of the truck.

Similarly, the Boards review of the Organization's ten statements that its Carmen delivered materials from Lynchburg is not persuasive proof of a practice which excludes others from performing the work. Carrier's denial and signed statements of Foremen substantiate that delivery of materials is a shared rather than exclusive responsibility at Lynchburg. There is no record of evidence that the Foreman performed any Carmens' work. Finding neither Agreement language nor substantial probative evidence to prove the work belongs solely to Carmen, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.