

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13471

Docket No. 13382

99-2-98-2-70

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

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rules 32(a) and 154(a), when on July 17, 1997 the Carrier allowed and/or permitted other than Carmen at Clifton Forge, Virginia to repair freight cars at Hinton, West Virginia.

2. Accordingly, the Carrier be instructed to compensate Carmen G. A. McCulley ID# 72046 and A. B. Wallace, Jr. ID# 609946, twelve and one half hours each at carmen’s rate and one half 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This dispute concerns the repair of five freight cars set out by a road train crew for defective wheels. The cars were set out at Hinton, West Virginia.

On July 6, 1997, the Carrier directed Carmen from Clifton Forge, Virginia, to transport four pair of wheels on a line of road truck and to re-wheel one of the cars.

On July 17, a Clifton Forge Carman and a Hinton Carman were directed to repair the remaining cars. The Hinton Carman was needed at another assignment, and a second Clifton Forge Carman was sent to the Hinton work site. During this time, according to the Organization, "the Carrier allowed and/or permitted" contractor employees "to assist and perform in repairing [the remaining three cars] by disconnecting air brakes, setting blocks, setting hydraulic jacks, disassembling wheels from truck assembly, replacing wheels, applying and installing roller bearing adapters to the wheel bearings and replacing the freight truck underneath freight car and reconnecting the air brake system."

The Hinton Carman who was assigned elsewhere was the only Hinton Carman. The Organization contends that two additional Clifton Forge Carmen should have been called to complete the repair work.

The Carrier contends (1) there was "no proof" of assistance by contractor employees in the repair work; and (2) "the Carmen named were not proper Claimants as they only have point seniority to protect work at Clifton Forge."

The Board finds no merit in either of the Carrier's defenses. As to whether contractor employees were utilized, this is demonstrated by the Mechanical Superintendent's appeal reply, in which he stated:

"[The Hinton] Carman is the only available employee assigned at Hinton. He was scheduled to work with the contractor but was unable and unavailable to do so. Therefore, the contractor was allowed to complete the work assignment."

As to point seniority, this is not a dispute as to assignment of work to Carmen with seniority at Hinton or Carmen with seniority at Clifton Forge. The claim

challenges use of contractor employees performing Carmen work. Because the Carrier had already utilized Clifton Forge Carmen to commence this assignment, the propriety of Clifton Forge Carmen completing the work, rather than assigning it to other than Carmen, cannot be challenged.

The Board was referred to Second Division denial Award 13189, which includes a Carrier Members' Concurring and Dissenting Opinion. Award 13189 stressed the significance of point seniority, but the situation reviewed therein concerned which Carrier Carmen should have been utilized. It was not concerned with the use of outside forces performing Carmen's work.

While the claim will be sustained, the appropriate remedy is payment of the claim at the straight time, not the punitive rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of November 1999.