

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13548

Docket No. 13432

00-2-99-2-27

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Baltimore & Ohio Chicago Terminal subsidiary of CSX Transportation, violated the current Working Agreement when they failed to call eight (8) carmen to work to dismantle three (3) freight cars on both Saturday, December 15 and Sunday, December 16, 1997 to do carman’s work on overtime on each of the above dates on the 1st shift 7:00 a.m. to 3:00 p.m.**
- 2. That the Baltimore & Ohio Chicago Terminal subsidiary of CSX Transportation (hereinafter referred to as the Carrier) be ordered to compensate Carmen F. Zurek I.D. #597955; D. Moster I.D. #597125; D. Cason I.D. #596065; R. Thomas I.D. #596060; D. Wozek I.D. #320309; G. Miller I.D. #321659; E. Page I.D. #202199; and C. Madden I.D. #180687 (hereinafter referred to as the Claimants) when they were available, qualified and willing to perform carman’s work consisting of eight (8) hours each at the carman’s punitive rate of pay as provided under the applicable rules of the Controlling Agreement.”**

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.

The instant claim arose when the Carrier employed an outside contractor to dismantle three rail cars at Barr Yard in Chicago, Illinois, on December 15 and 16, 1997. The Organization contends that the Carrier violated Rule 26 - Assignment of Work, which provides:

“None but mechanic or apprentices regularly employed as such shall do mechanics’ work as per the special rules of each craft. . . .”

The Organization further maintains that the Carrier violated Rule 41 - Classification of Work, which provides:

“Carmen’s work shall consist of building, maintaining, dismantling, . . . and all other work generally recognized as carmen’s work.” (Emphasis added)

The Carrier maintains that the rail cars were sold to Gulf Coast Dismantling on an as is, where is basis. Consequently, the work fell outside the scope of the Agreement.

The issue presented in the instant case has been considered in numerous Awards. Typical thereof is Second Division Award 8341, where the Board stated:

“The Board finds that the Carrier’s overriding intention was to dispose of the cars and actually sold them not with a view to retaining them in their component parts (i.e., scrap and reusable parts). Nevertheless, the Carrier did specify in advance – by contract and by identification with its own personnel – that it wished to retain certain equipment on the cars. This portion of the work fell clearly within the ‘dismantling’ function for salvage purposes. These salvaged items did not effectively leave the

Carrier's possession, and the work was clearly within Carmen work classification."

The Carrier's reliance on Second Division Award 10413 is misplaced. In that case, the Board evaluated the record as follows:

"The evidence of record clearly establishes that ownership of the cars passed to Midwest Steel and Alloy Corporation as per purchase order No. 4629 of Carrier dated May 29, 1980. Other than the assertion that air brakes and equipment, couplers and draft gears were salvaged, the record contains no probative evidence to support such a claim."

However, the Sales Order in the instant case expressly provides that the Carrier was to retain certain wheel and air brake material. Thus, the claim must be sustained with respect to the material that the Carrier retained, but denied with respect to all other material that was sold to Gulf Coast Dismantling. Accordingly, we will award four hours pay at the straight time rate to each Claimant.

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 29th day of September, 2000.