Award No. 4515
Docket No. 4378
2-SOU-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L-C. I. O. (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the controlling Agreement, when on October 23, 24, 25, 26 and 27, 1961, Carrier contracted, instructed and/or authorized employes of Rosenthal Metal Company to repair Southern System's automobile device cars located on a siding at McDonough, Georgia.

2. That accordingly the Carrier be ordered to discontinue these violations and compensate

(a) Carman E. N. Bryan 8 hours at rate of time and one-half for October 23, 1961, and 8 hours at rate of time and one-half for October 24, 1961.

(b) Carman J. D. Parker 8 hours' pay at rate of time and one-half for October 25, 1961, and 8 hours' pay at rate of time and one-half for October 26, 1961.

(c) Carman E. F. Phillips 8 hours at rate of time and one-half for October 27, 1961.

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Co., hereinafter referred to as the carrier, maintains at Atlanta, Ga., modern facilities for the inspection, repairing and servicing of freight cars.

On October 23, 24, 25, 26 and 27, 1961, employes of Rosenthal Metal Company of Atlanta, Ga. made repairs to carrier's (Southern Railway System) automobile transport cars RTTX-476648, 474712, 476730, 100374, 476842, 476636, 476698, 476841 and 476652 on carrier's siding at McDonough, Ga.

Carman E. N. Bryan, J. D. Parker, and E. F. Phillips, hereinafter referred to as the claimants, are regularly employed by the carrier as carmen in its

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 were given due notice of hearing thereon.

Carrier leases railroad flat cars from Trailer Train Company which are marked "TTX" for identification. The leasing arrangement apparently has a maintenance and repair clause.

Carrier purchased a number of tri-level automobile carrying racks and had them mounted on the leased "TTX" cars.

It became necessary for Carrier to convert the horizontal bridge plates located at each end of each level of the racks to a vertical type bridge plate and the Carrier contracted the work to the Rosenthal Metal Company. The work was performed at McDonough, Georgia on a siding.

Claimants who are Carmen at Carrier's facilities at Atlanta, Georgia, allege a violation of the Classification of Work Rule (Rule 149) of the current agreement, as well as Rules 163 and Rule 31.

It is the Carrier's position that no repair work was done to any cars; that Carmen could only make running repairs to the TTX cars; and that the tri-level racks are not a part of the "TTX" cars.

Claimants maintain that the racks are integral parts of the cars when mounted thereon, and therefore the repair and maintenance of the racks comes within the Carmen's Classification of Work.

The "TTX" cars, as such, were not worked on at all by the Rosenthal Metal Company, nor are the Claimants here seeking any work on them, so any restrictions contained in the leasing contract between Carrier and Trailer Train Company are not relevant to our consideration of this dispute.

There is no question that the racks are removable and that the "TTX" cars can be used for other purposes than mounting a rack thereon for hauling automobiles. However, the racks are Carrier's property, designed for one purpose and one purpose only: to mount on "TTX" cars for the purpose of Carrier's business in transporting automobiles. When so mounted they become as integral a part of the car as the trucks, couplers or draft gear. These items, standing apart, are of no more value to the composite car than is the rack standing alone. For Carrier to move its cars, it needs trucks. For Carrier to move its equipment in the transportation of automobiles, it needs the racks. We hold that the racks are an integral part of the car, and being Carrier's property, the right to the maintenance and repair of them comes within the Carmen's Classification of work rule. The work here performed was modification or repair of the racks, and there is no issue of the ability of these Claimants to do the work.

AWARD

Claim 1: Sustained.

Claims 2(a) (b) and (c): Sustained, except that the compensation shall be at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1964.

DISSENT OF CARRIER MEMBERS TO AWARD 4515

In this dispute the Organization contended that Carrier violated Rules 31, 149, and 163 of the controlling agreement when it allegedly contracted with Rosenthal Metal Company "to repair Southern System's automobile device cars."

The Organization erroneously contended that automobile carrying racks mounted on nine of Trailer Train Company's flat cars were an integral part of the cars and that under the controlling agreement carmen had a contract right to maintain, repair, or modify them and the claimants should have been used to modify the bridge plates on them on October 23, 24, 25, 26, and 27, 1961.

Carrier proved that the nine **flat** cars on which the automobile carrying racks were mounted are owned by Trailer Train Company; that the automobile carrying racks mounted thereon were purchased by Carrier from the manufacturer, who mounted them on the nine **flat** cars owned by Trailer Train Company; that the automobile carrying racks mounted on many of Trailer Train Company's **flat** cars are leased; that the automobile carrying racks are not part of the cars on which mounted; that this fact is recognized in the Official Railway Equipment Register; that separate rental charges are made for the **flat** cars and automobile carrying racks when they move off Carrier's lines; that Carrier does not own "automobile device cars" of the type involved; that no repairs were made to "automobile device cars" on Trailer Train Company's cars by employes of Rosenthal Metal Company as alleged by the Organization; that instead employes of Rosenthal Metal Company modified the bridge plates on the automobile carrying racks the same as they and others had done previously; that such work did not constitute the "building, maintaining, dismantling * * * and inspecting * * * freight cars" nor did it constitute "other work generally recognized as carmen's work" within the meaning of these words as used in the agreement; that exclusive rights to work are not granted by the terms of the agreement; that at no time have this Carrier's carmen performed any work on automobile carrying racks mounted on Trailer Train Company's **flat** cars; and that the work involved in this dispute has not been recognized as carmen's work on this Carrier's property.

Despite the Organization's failure to prove that the controlling agreement rules were violated or show a practice in support of its allegations, the Division found in part:

" * * * that the racks are an integral part of the car, and

being Carrier's property, the right to the maintenance and repair of them comes within the Carmen's Classification of work rule. The work here performed was modification or repair of the racks * * * ."

The findings in this award are clearly erroneous and contrary to the agreement and other evidence of record. For these reasons, we dissent.

P. R. Humphreys

F. P. Butler

H. K. Hagerman

W. B. Jones

C. H. Manoogian