

Award No. 4864

Docket No. 4801

2-SOU-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement when on October 2, 1963, it instructed and/or authorized employees of Southern Iron and Equipment Company to repair Southern System's automobile device cars located on a siding at Chamblee, Georgia. Also on October 4 and 17, 1963, it instructed and/or authorized employees of Rosenthal Metal Company to repair Southern System's automobile device cars located on a siding at Rosland, Georgia.

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

- (a) Carman N. W. Bryan eight (8) hours pay at the rate of time and one-half for October 2, 1963.
- (b) Carmen E. F. Phillips and P. E. Mobley eight (8) hours pay each at the rate of time and one-half for October 4, 1963.
- (c) and Carmen J. D. Parker and E. F. Phillips eight (8) hours pay at the rate of time and one-half for October 17, 1963.

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

On October 2, 1963, employees of Southern Iron and Equipment Company of Chamblee, Georgia, made repairs to carrier's (Southern Railway System) automobile transport cars RTTX 477282, 477121 and 478480 on carrier's siding at Chamblee, Georgia, consisting of heating and straightening bent bridge plates on the automobile racks of said cars. Also on October 4 and 17, 1963, employees of Rosenthal Metal Company of Atlanta, Georgia, made repairs to carrier's (Southern Railway System) automobile transport cars RTTX 501248, 501249, 501247, 50050, 550698, BTTX 478430, 478409, TTX 100661, 100818, 474685, BTTX 478394 and RTTX 474556, 478490 on carrier's siding at Rosland, Georgia, consisting of heating and straightening tie down chains and ratchets and welding tie down chain housing on the automobile racks of said cars.

of Trailer Train's flat cars and leased or carrier owned automobile carrying racks riding thereon when the cars and racks moved off line leasing Trailer Train's flat cars, and

(f) By the fact that Trailer Train did **not** pay for repairs made to the automobile carrying racks by Southern Iron and Equipment Company or Rosenthal Metal Company, that instead the GM&O, SAL and Southern paid for repairs made to the racks owned by or leased to them. (Under AAR rules if work had been performed on Trailer Train's flat cars it would have been paid for by Trailer Train.)

(8) Carrier does **not** own "automobile device cars".

(9) Neither Southern Iron and Equipment Company nor Rosenthal Metal Company were authorized to "repair Southern System's automobile device cars" as alleged by the brotherhood, and neither of these companies made any repairs to Trailer Train's flat cars.

(10) Heating and straightening bent bridge plates on automobile carrying racks by Southern Iron and Equipment Company on October 2, 1963 and welding, heating and straightening tie down chains and ratchets and replacing certain of these parts where necessary by Rosenthal Metal Company on automobile carrying racks riding on Trailer Train's flat cars on October 4 and 17, 1963, did **not** constitute the "building, maintaining, * * * and inspecting * * * freight cars" or "other work generally recognized as carmen's work" within the meaning of these words as used in Rule 149 of the controlling agreement.

(11) Exclusive rights to work are **not** granted by the terms of the carmen's agreement.

(12) **At no time have this carrier's carmen performed any work on automobile carrying racks riding on Trailer Train's flat cars.**

(13) The work involved in this dispute has not been recognized as carmen's work on this carrier's property.

(14) Carmen and their representatives and the other shop craft organizations recognized by their notice letter of October 24, 1960 that work on piggy-back equipment, such as automobile carrying racks, trailers, containers, etc., is not embraced in any rule in the shop crafts' agreement.

If the board considers the clear, unambiguous language of the controlling agreement and interprets it in the light of the evidence of record, it cannot do other than make a denial award.

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 employees 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..

The Organization contends that Carrier, on October 2, 1963, instructed or authorized employees of Southern Iron and Equipment Company to make certain repairs to Carrier's automobile device cars at Chamblee, Georgia. That on October 4th and 17th, 1963, Carrier instructed or authorized employees of Roseland Metal Company to make certain repairs to Carrier's automobile device cars at Roseland, Georgia.

Further the Organization claims time for 8 hours pay at the time and one-half rate for the employees, for failure of Carrier to use them to perform the work, all in violation of the provisions of Rule 149—Classification, Rule 163—Carmen sent out on road to perform work, and Rule 31—Mechanics or Apprentices to perform Mechanics Work.

Carrier denies it has violated any of the provisions of the Rules, as alleged.

In reviewing the Docket here before us, there is ample proof that on October 2, 1963, work was performed by other than Southern Employees on Cars RTTX 477282, RTTX 477121 and RTTX 478480, wholly owned by Trailer Train Company. That any work performed was for making repairs consisting of heating and straightening bent bridge plates on the automobile racks on the cars. The record further reveals that the carrying racks on the cars were owned outright by G.M.&O. R.R., and who paid for such repairs. This is not denied by the Organization. The same applies to work performed on carrying racks attached to cars RTTX 501248, RTTX 401249, RTTX 401247, all such carrying racks owned by SAL, and whatever repairs or work performed was paid for by SAL. Since the work performed and repairs made were paid for by the carrying rack owners under an agreement between the railroads, who make its own repairs, or authorize repairs to be made by contracts, claims here listed above for repairs or time, is of no responsibility of the Carrier here before us, and such claims should be dismissed.

The record further show that the following listed cars, are all the property here of Trailer Train Company, but the carrying racks are property of Carrier named here. Cars No's. RTTX 550698, 478690, 474556, and TTX 100861 carry "Tri level racks". Cars BTTX No's. 478430, 478409, 478394 and 100818 are cars equipped with Bi level racks. The only work performed on these cars was to the carrying racks owned by this Carrier.

While there is no proof before us that Carmen have the exclusive right to perform the work on the carrying racks, in view of Awards No's. 4515, 4598 and 4664, we find that while such awards are not palpably erroneous, the claims for actual time for labor performed on carrying racks owned by Carrier should be sustained, but such compensation due claimants shall be the applicable pro rata rate.

AWARD

Claim dismissed in part and sustained in part as per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1966.

DISSENT OF CARRIER MEMBERS TO AWARD 4864

The dissent of Carrier members to Award 4864, is restricted to the following expressed in the Findings of the award;

“in view of Awards No's. 4515, 4598 and 4664, we find that while such awards are not palpably erroneous the claims for actual time for labor performed on carrying racks owned by Carrier should be sustained xxx”

For the reasons previously set forth in our dissent in Award 4515, we dissent to the majority decision in this case.

P. R. Humphreys

F. P. Butler

H. F. M. Braidwood

H. K. Hagerman

W. B. Jones