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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6529
Docket No. 6317
2-IT-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 154, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Illinois Terminal Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, Carrier improperly assigned other than Carmen to dismantle freight cars at its Decatur, Illinois Repair Track.

2. That accordingly, Carrier be ordered to make the Carmen whole by additionally compensating Carmen R. Chase, H. Tadlock, R. Terry, B. Walker, J. Tadlock, R. Shoemaker and L. Carter in the amount of twenty-four (24) hours each at the time and one-half rate of pay.

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.

On December 20, 1971, one of Carriers road freight trains suffered a derailment and fifteen freight cars sustained extensive damage. Carrier determined that four of the cars were repairable and appropriate measures were taken relative thereto. The remaining eleven cars, which at the time of derailment were owned by another Company, were declared "totalled", and by agreement with the owning Company acquired by the Carrier, party hereto, with the intention "to dispose of these cars at the scene of the accident". (Carrier attachment 3.) Carrier then "verbally agreed" with Isringhousen Wrecking Service as follows:

"December 22, 1971

Subject: Derailment, Monticello, ILL., 12/20/71 on Illinois Central R. R. (Extra GRAIN UNIT TRAIN EAST)

(a) Seven (7) cars to be cut up and loaded into gondolas at derailment, gondolas to be furnished by Illinois Terminal.

(b) Four (4) cars to be trucked if possible (otherwise cut up) and delivered on own wheels to Decatur yards.

(c) Above a and b at no cost to the Illinois Terminal, also no transportation cost to Mr. Isringhousen. ...

(e) Illinois Terminal to receive the sum of $4,500.00 cash.

(f) Illinois Terminal to receive the following:

(1)	Ten (10) pr. roller brg. wheels	@ $300.00	$3,000.00
(2)	Three (3) car sets roller brg.	@ 832.00	2,492.00
(3)	Six side frames A-2	@ 202.00	1,213.00
(4)	Three (3) bolsters	@ 269.00	807.00
			$12,012.00"

(Carrier memorandum of December 22, 1971, submitted as Carrier-attachment 2)

The four cars referred to in (b) were rerailed and moved to Carrier's Decatur, Illinois Yards. On January 31, February 1 and February 2, 1972, employes of Isringhousen Wrecking Service appeared at Carrier's Decatur, Illinois Yards and dismantled the four cars which were on the Rip track therein. A substantial amount of salvaged parts were immediately turned over to Carrier and placed in its stock at the Decatur Yards and other of its installations.

Petitioner charges that Carrier, by not utilizing Claimants, who were ready, willing, able, and available, to do the work on the four cars, violated Rules 124 and 32 of the Controlling Agreement between the parties. Said Rules read in part:

"Classification of Work.

Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), . . . all passenger and freight cars, both wood and steel, . . ."

"Rule 32

Assignment of Work.

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. . . ."

Carrier rejected the claim on the following grounds. (1) It had properly sold the "totalled" equipment in full "f.o.b." the wreck site. They were therefore the property of Isringhousen Wrecking when worked on by its employes.

(2) The salvaged parts were purchased from Isringhousen, the then owner of same.

(3) The Controlling Agreement was not applicable because the equipment was not Carrier's property and therefore none of its rules were violated.

Petitioner does not, in the instant matter, challenge the right of Carrier to sell its equipment and have the purchaser remove same from Carrier's property. If it did, it would have been faced with the holdings of this Board rejecting claims based thereon. Awards 2377, 2922, 3158, 3228, 3585, 3586, 3635, 536, 3739, 4476, 5957 and 5958.

The crux of this dispute rests on whether Carrier actually divested itself of a proprietory interest in the four cars in question, before February 21, 1971. In Awards too numerous to cite, we have stated in effect that saying so does not make it so. The December 21, 1971 Intracarrier Memorandum by Carrier's Chief Mechanical Officer quoted hereinablve does not substantiate a clear and definitive transfer of ownership of the cars. It does establish that on the day after the derailment, Carrier desired to retain for its own subsequent use a substantial amount of salvageable materials to be realized from dismantling. In effect, Isringhaused Wrecking was to pay $4,5000.00 for the scrap of the eleven cars which were "totalled". Carrier was to secure parts, presumably from the four cars, valued at $7512.00. No evidence of actual sale and purchase to and from Isringhausen is found in the record. The cars remained on Carrier's property at all times involved. Although Carrier alleges that it "leased" space on its Rip track to Isringhousen (Carrier's Exhibit E) for dismantling of the cars, it offers no probative evidence or even a statement as to an amount charged therefor.

Based upon the record before us, it must be held that Carrier had "de facto" ownership and possession of the four cars dismantled on January 31, February 1 and February 2, 1971 in its Decatur, Illinois Yards, and is therefore distinguishable from fact patterns in the cited Awards relied on by Carrier. There were mechanics of the Carmen craft employed at said installation available to perform the dismantling and should have been assigned thereto by the Carrier.

Neither in its submission or its rebuttal did Carrier invoke, in the alternative, the provisions of Article II of the National Mediation Agreement of September 24, 1964 and therefore any limitations which might stem therefrom are not applicable hereto.

A W A R D

Claim sustained, but at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1973.