

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 12, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement, Carrier improperly assigned other than Carmen (Contractor Kenneth Milkie) to dismantle fourteen (14) railroad cars at its East Minneapolis Repair Track, C&NW-C.St.P.&M.&O.
2. That the Carrier reclaimed useable parts, A.B. brake valves, air brake cylinders, angle cocks, air hoses, journal bearings, draft gears, yokes, cross keys, couplers, roller bearing wheels, friction bearing hand brakes, hand brake wheels, side and end ladders, sill steps, etc.
3. That accordingly, Carrier be ordered to make the Carmen whole by additionally compensating the following Carmen 8 hours each at the time and one-half rate as indicated:

Henry Lang - 4 days, Robert Clough - 2 days, Lester Simpson - 3 days, John Johnson - 4 days, and John Gulbranson - 5 days.

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.

Petitioner contends that Carrier violated Rules 138, 30-T, and 52 of the applicable Agreement when on June 5, 1972 they entered into a contract with an outside contractor, Mr. Kenneth Milkie, wherein Mr. Milkie was to dismantle 14 railroad cars. They claim that Milkie dismantled the cars at Carrier's East Minneapolis Repair Track and returned the reclaimable material such as air brake valves, angle cocks, etc. as well as scrap metal from the cars to the Carrier.

Carrier does not dispute the facts herein. However, it maintains that the cars sold to Mr. Milkie were retired and were disposed of in the same manner that was used to dispose of other retired and/or wrecked cars over the past several years.

It is obvious from the clear and unambiguous language of Rule 138 that the work of dismantling passenger and freight cars is work reserved to employees of the Carmen's craft. And while there is a distinction between dismantling and cutting up cars for scrap as Carrier contends, this Board said in Award 1393 that "to dismantle means to break down, strip, deprive or divert of equipment; or to remove the main fixtures from a machine." Using that criteria, we hereby find that Carrier contracted with Milkie for the dismantling of the cars in question in contravention of Rule 138 of the Agreement.

No one is questioning Carrier's right to sell its equipment and have the purchaser remove it from Carrier's property. However, such was not the case at hand. Carrier concedes that the contract with Milkie required that certain specified material be returned to it. We are forced to conclude from the record before us that the primary purpose of the contract with Milkie was the dismantling of the freight cars in question with Carrier's intent to salvage useable parts and scrap metal. Since such was the primary result sought we deem this to be Carmen's work and they should have been assigned thereto by Carrier. Rule 138 of the Agreement having been violated here we shall allow the compensation claimed but at the pro rata rate.


A W A R D

Claim sustained, but at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of December, 1974.