Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7521
SECOND DIVISION Docket No. 7356
2-SLSW-CM-'78

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 45, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That on August 14, 1975 the St. Louis Southwestern Railway Company violated the terms of the controlling agreement when it called an employee of another craft to repair freight cars WCTR 100525, 100849, 100687, 100535, 100925, and 100687 at the Pine Bluff Gravity Yard.

2. That the St. Louis Southwestern Railway Company be ordered to pay Carman J. H. Miller twelve (12) hours' pay at the pro rata rate for August 14, 1975, and that he be made whole for all other lost benefits including Railroad Retirement credits, insurance coverage and vacation credits.

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.

The White City Union Railway Company purchased seven cars from the Pacific Car and Foundry Company. An end car cushioning device on the cars was manufactured by the Freight Master Corporation. The cushioning device on these cars failed. While the cars were on the Carrier's property their movement was halted so the device could be modified to eliminate the defect. The Freight Master Corporation made arrangements to do the repair work under the terms of a warranty which ran in favor of the White City Terminal Union Railway Company.

The Manager of Service Engineering for Freight Master performed the repair work. He utilized the services of a furloughed blacksmith who he compensated directly. It is the position of the Organization that the work in question

is properly carmen's work and that the claimant carman should have been called to perform the work. It is the organization's contention that because the work is described in the Classification of Work rule it must be done by carmen without regard to whether the White City Terminal Union Railway Company had a right to have the work performed without charge under a warranty. The Carrier takes the position that its only connection with the matter is that the cars happened to be on its property when the warranty work was performed. Carrier makes the argument that warranty work does not come under the terms of the collective bargaining agreements.

As was stated in Award 7236 (Roadley) we must find "that the work was not only done on the Carrier's property but that it was work within the Carrier's control." In the instant matter the work was not within the control of the Carrier but was work subject to the contractual warranty agreement between White City Terminal Union Railway Company and the manufacturer of the cars.

Award 7236 correctly states the position of this Board with regard to the performance of warranty work such as was present in this case:

> "There is no question that the work performed was to correct a defect recognized as such by the manufacturer, and not a modification or repair as those terms are generally used, and it is our view that the carrier had the right to seek and expect recourse under the warranty. The Board is cognizant of the diligence of all the Organizations in policing their labor-management contracts so as to preserve the integrity of their scope rules, but, in the instant case, the Board finds that the contentions of the Organization are tantamount to an encroachment upon the prerogatives of management. The Board stated, in Third Division Award No. 5044, in pertinent part:
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> > 'It seems to us that a Carrier, in the exercise of its managerial judgement, could properly decide to purchase the engineering skill of the seller of railroad equipment, ..., and a guarantee that it would operate efficiently and economically.'
>
> The Board could hardly recognize a carrier's right to purchase a piece of equipment covered by warranty as to performance and then deny a carrier the right to seek the benefits of the warranty if need be. Under the circumstances in this case we find that the controlling Agreement Rule 117 was not violated by carrier."

We will deny the claim.

Award No. 7521
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of April, 1978.