

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

Parties to Dispute: { System Federation No. 10, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Firemen & Oilers)  
{ Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling agreement, the Denver and Rio Grande Western Railroad Company improperly assigned the work of cleaning eight "tank" freight cars on the cleaning track at its train yards in Grand Junction, Colorado, on October 6, 7, 8, and 11, 1976; to other than Firemen & Oilers.
2. That accordingly, the Denver and Rio Grande Western Railroad Company be ordered to compensate Laborer Tony Audino 40 hours at the pro rata rate, Laborer John Dickey 16 hours at the pro rata rate, Laborer Tony Garcia 12 hours at the pro rata rate, and Laborer Jose Duran 12 hours at the pro rata rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 October 6, 7, 8 and 11, 1976 two employees of the Power Cleaning Service, a contractor, cleaned eight tank cars at Carrier's Grand Junction Yard. Petitioner alleged that this was a violation of the Agreement.

Petitioner alleges that Carrier erred in assigning the work of cleaning tank cars in its train yard to a subcontractor rather than to Firemen and Oilers. It is argued that the cleaning of tank cars is generally recognized as work accruing to Firemen and Oilers; thus, the contractor performed work within the Scope of the Agreement. Petitioner states that Carrier had the necessary equipment and personnel to perform the disputed task and Claimants herein were rested and available for an overtime call.

Carrier's version of the work in dispute differs sharply from that of the Organization. Carrier asserts that for a variety of reasons, the work of cleaning the tank cars on Carrier's tracks was performed by the contractor under an arrangement with a shipper, Gary Western, Inc., and Carrier was not involved in the arrangement. Carrier also states that the cars in question were owned by a third party and leased to the shipper; hence, Carrier had no control or jurisdiction of the tank cars, or their cleaning.

In addition to the above, Carrier argues, inter alia, that the work of cleaning tank cars is not work which by Agreement or practice belongs exclusively to Claimants. Carrier avers further that Petitioner has failed to carry its burden of proof in this dispute.

Although Carrier has made a series of arguments to support its position that the Claim herein is without merit, two of the arguments are clearly determinative of the dispute. First, Carrier's point that the work in question is not reserved exclusively to claimants appears to be correct. The Scope Rule of the Agreement does not provide for the reservation of the work exclusively to Petitioner and Carrier states that the cleaning of cars is performed by many crafts. Petitioner has offered no evidence to support a contrary view and merely has asserted that the work is theirs. Of equal significance is the fact, unrebutted, that the particular work in question was not under Carrier's control and that consequently it could not assign the work to its employees. There have been a host of awards which have held that the contracting of work or the performance of work by other than Carrier employees is not a violation of the Agreement when such work was not for the benefit of Carrier, not at its expense, and not under its direction or control. In Third Division Award 20156, the Board stated:

"... In a long series of Awards going back to 1951, we have held consistently that work which is not for the exclusive benefit of Carrier and not within Carrier's control may be contracted out without violation of the Scope rule (see for example Awards 5246, 6499, 12745 and 19718)..."

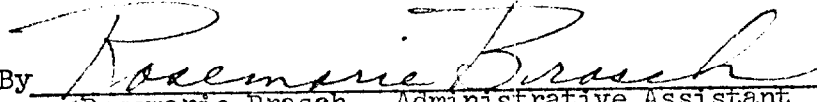
For the reasons indicated above the Agreement was not violated.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1979.