

The Second Division consisted of the regular members and in addition Referee Bernard Cushman when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carman)
{ New Orleans Public Belt Railroad

Dispute: Claim of Employees:

1. That the New Orleans Public Belt Railroad violated the controlling agreement when the Superintendent of Roadway Department assigned a roadway welder to perform Carman's work in removing the brake rigging from EJ&E 83694 at Cotton Warehouse yard on February 18, 1977.
2. That accordingly, the New Orleans Public Belt Railroad be ordered to additionally compensate Carman A. Findorff in the amount of four (4) hours' pay at the time and one-half rate for said violation.

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.

By letter dated August 17, 1978, the Board notified the Brotherhood of Maintenance of Way employees of the existence of this dispute and furnished that Organization with a copy of the Employee's and the Carrier's submissions. The Board's letter stated that if the BMWE desired to make a response that it should do so within thirty (30) days of the Board's letter. No response was received from the BMWE.

On February 18, 1977, car EJ&E 83694 was derailed at the lower end of Carrier's Cotton Warehouse yard. The Carrier assigned a Road Department Welder to burn and remove the brake rigging from car EJ&E 83694. The Organization claims that the Carrier violated Rules 66 and 74 of the Agreement dated January 1, 1976, by so doing. The Organization claims that the work performed was Carman's work.

Rule 66 provides:

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flash making and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing, operating punches and shears, doing shaping and forming; work done with hand forgers and heating torches in connection with Carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sandblast machine or removing vats); all other work generally recognized as painters' work under the supervision of the Locomotive and Car Departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

Rule 74 provides:

"Carmen will be sent to inspect and repair cars on line of road or away from shops. Helpers may be assigned to held carmen when necessary in the performance of this work.

It is also understood, in event of work away from shop, one (1) carman or one (1) carman and one (1) apprentice or two (2) carmen and one (1) apprentice, may be sent according to the discretion of Superintendent, Car Department."

During the handling of this case on the property and before this Board, the Carrier asserted that the derailment constituted an emergency and that under the wide latitude normally given Carriers in the application of Scope Rules in emergency situations the use by the Carrier of a Roadway Department Welder was proper. See Second Division Award 4826 (Johnson) and Second Division Award 5574 (Ives).

The Carrier points out that its claim of emergency was never challenged by the Organization in the handling of the dispute on the property. Under such circumstances, it would appear that it was not appropriate for the Organization to raise such a defense. Generally speaking, issues, arguments and defenses must be presented on the property and may not be presented for

the first time at the Board. See Third Division Award 20040 (Sickles); Third Division Award 10789 (Ray); Third Division Award 18656 (Devine). Moreover, derailment prima facie presents an emergency situation. Under all the circumstances, the Board is of the view that the claim must be denied.

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 27th day of September, 1979.