

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 26(a) of the controlling Agreement and Article V of Article II of the Agreement of January 12, 1976, when they used employes of another railroad (Houston Belt & Terminal Railroad Company) to perform work of the Carman's Craft, March 30, 1978.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen B. Lang and O. Gutierrez in the amount of three (3) hours each at the punitive rate for their 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.

The primary question raised in this dispute is whether or not the work performed by the Houston Belt and Terminal Railroad Company on March 30, 1980 between the hours of 8:15 A.M. and 11:15 A.M. belonged to the Claimants.

In reviewing the record, we take judicial notice of Article II as amended of the September 25, 1964 Agreement relative to subcontracting, but find that the instant case can be decided by a critical examination of the fact specifics within the context of our decisional law.

In this dispute, the evidence shows that Houston Belt and Terminal Railroad forces performed this type of work, since Carrier did not own this equipment. Truck 309 was capable of loading the wrecked cars and was used to load the cars at the repair track at Settergast Yard. The work in question involved the use of one operator, the aforesaid numbered truck and two other HB&T employees (carmen) to load out the damaged freight cars, which consisted of loading and tying down damaged freight cars. It was not work that unmistakably accrued to Claimants by

virtue of Rule exclusivity or demonstrable past practice. It was work that was usually performed by the Houston Belt and Terminal Railroad Company.

In Second Division Award 7685, which is on point with this dispute, we stated in pertinent part that:

"We have thoroughly reviewed the record in this case and must conclude that this work has been performed by HB&T employees for over 28 years, a long standing past practice, and there is nothing in the record to indicate that Claimants have any contractual right to this work."

We find this holding controlling herein and dispositive of petitioners' claims. We will deny the claim.

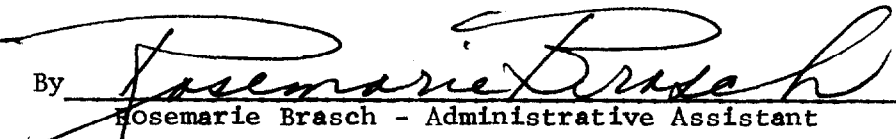
A W A R D

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 21st day of August, 1980.