

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

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when other than carmen performed carmen's work at Greensboro Lumber Company, Greensboro, Georgia, on May 1, 1979.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman J. A. Agner in the amount of eight (8) hours at time and one half pro rata rate of pay 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 employes 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 Organization contends that Carrier violated Rules 15, 26, 99 and 100 of the Controlling Agreement when it employed the services of a welder and a welding machine from the Greensboro Lumber Company on May 1, 1980 to perform work that accrued to the Carmen's craft. It asserts that Claimant was first out and available for work on this date and could have used the welding equipment under special arrangements with the Greensboro Lumber Company or alternatively, Carrier could have rented such equipment in Augusta, Georgia. It avers that the two carmen who were initially sent with the over the road truck from Augusta to modify the claim tie-down devices on freight car TTPX 80918 were not present when the ancillary welding work was performed, but avers that Carrier could have called Claimant to perform this work. It questions Carrier averment that emergency conditions necessitated using the lumber company's employe since it correlatively argues that the freight car could have been properly maintained when it was at the Atlanta, Georgia car shop four days earlier.

Carrier contends that it was compelled to use the Greensboro Lumber Company welding machine and employe since this was the lumber company's condition of usage and it had no viable options to complete the work on freight car TTPX 80918. It argues that irrespective of how many carmen were sent to the Greensboro situs, the exigencies of the moment, including the paramount need of loading

this freight car demanded prompt action. Carrier avers that its freight business with the lumber company was contingent upon efficient service and its decision to use the non-covered employe to perform the welding work was responsive to these unusual circumstances. It asserts that it paid one of the carman at the pro rata rate of compensation in recognition of this unavoidable predicament.


In our review of this case, we agree with the Organization's position that the welding work performed by the employe of the Greensboro Lumber Company was Agreement covered work, but we find that the unusual circumstances requiring this work justifies Carrier's one time use of the lumber company's welder. The record shows that Carrier was confronted with an unexpected dilemma that required the immediate use of this welder, and it was plainly constrained by these factors to use the lumber company's employe and equipment. Contrary to the Organization's observation that Carrier had time to complete the work when the freight car was at the Atlanta, Georgia Car Shop or that it could have been sent to the Augusta Car Shop, we do not find that the welding problem was readily foreseeable at that time. When freight car TTPX 80918 was at Greensboro on May 1, 1980, it was needed for transport duty and Carrier's exercise of this option under these pressing conditions, was indeed understandable. In fact, Carrier was mindful of the situation's implications when it paid one of the two carmen at the welder's rate of compensation. To be sure, the work performed was carman's work, but the assignment herein was purposely responsive to an emergency type condition. The circumstances were unusual and mitigative of any purported rule violation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deper - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984