

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the controlling, when on the dates of August 25, 1980 through August 29, 1980, they allowed other than carmen to engage in the dismantling of freight cars, brought onto the High Yard Shop Track, at Parkersburg, West Virginia. This dismantling work was performed by Midwest Steel and Alloy Corporation, purchaser, utilizing five (5) burner operators, and two (2) Foremen, for a period of five (5) days, in direct violation of Rule 50 and Rule 138, CARMENS' SPECIAL RULES, Classification of Work, of the controlling Agreement.
2. That Carrier be ordered to compensate claimants herein for all losses incurred account of the violation of the above mentioned Rules of the Agreement, as follows: Carmen R. H. Millikin, C. R. Barnes, H. C. Dean, R. Martin, and J. J. Bell, for eight (8) hours pay, each, at the time and one-half rate, on August 25, 1980; H. C. Dean, C. R. Barnes, H. B. Anderson, M. L. Ward, and G. L. Williams, for eight (8) hours pay, each, at the time and one-half rate of August 26, 1980; C. R. Barnes, R. H. Millikin, P. V. Rager, R. Martin, and J. J. Bell, for eight (8) hours pay, each, at the time and one-half rate, on August 27, 1980; H. C. Dean, C. R. Barnes, J. J. Bell, M. L. Ward, and G. L. Williams, for eight (8) hours pay, each, at the time and one-half rate, on August 28, 1980, H. C. Dean, C. R. Barnes, G. L. Williams, J. J. Bell and P. V. Rager, for eight (8) hours pay, each, at the time and one-half rate, on August 29, 1980.

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.

on or about May 29, 1980, the Carrier entered into a purchase agreement with Midwest Steel and Alloy Corporation. The agreement called for the sale of 135 secondhand freight car bodies on an as is basis. The Carrier also agreed to furnish gondola cars for trucks to be loaded by purchaser. In late August, 1980, Midwest Steel employes came to the Carrier's Parkersburg, West Virginia, Yard and removed the car bodies from the trucks, and the trucks were placed in gondola cars.

The Organization asserts the Carrier is in violation of Rules 50 and 138 of the controlling agreement in that the work of dismantling is part of the carmen's classification of work rules. Rules 50 and 138, in pertinent part, are as follows:

Rule 50

"Work of scrapping engines, boilers, tanks and cars or other machinery will be done by crews under the direction of a mechanic."

Rule 138

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight cars): painting, upholstering and inspection all passenger and freight cars."

The Organization submits that the trucks were retained by the Carrier and that the removing of the center pins and all other work in connection with the trucks accrue to the carmen. The Organization also submits that the air brakes and equipment, couplers, and draft gears were salvaged.

With respect to the clear meaning of Rule 138, the work of dismantling freight cars is reserved to the carmen's organization. Two key questions must be answered by this record in order to properly render an award. The first involves the ownership of the cars in question concurrent with their removal from their trucks in August, 1980. The second is whether or not, in fact, the Carrier salvaged or retained equipment of the cars other than the trucks (See Second Division Awards 6529, 6800, and 8341).

The evidence of record clearly establishes that ownership of the cars passed to Midwest Steel and Alloy Corporation as per purchase order No. 4629 of Carrier dated May 29, 1980. Other than the assertion that air brakes and equipment, couplers and draft gears were salvaged, the record contains no probative evidence to support such a claim. The only exception to the purchase of the 135 cars on an as is basis is the trucks. Two prior claims involving similar fact circumstances were not pursued after Carrier denial and explanation that the

retention of reusable trucks does not constitute dismantling as the purchaser simply removed the car bodies from the trucks. Accordingly, this Board finds the sales agreement predates this claim and that all work performed in August, 1980, was done so in accordance with the terms of the sales agreement. The work involved was beyond the control of the Carrier. Having consummated a sale of the 135 cars, the scrapping of those cars did not constitute salvage of usable parts. We, therefore, find no violation of the classification of work rules.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985