Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10979
SECOND DIVISION Docket No. 10713
2-SP-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Southern Pacific Transportation Company
(Eastern Lines)

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rules 117 and 29, when they arbitrarily transferred ten (10) bad ordered cars from their facilities at Houston, Texas, to be repaired at the GATX Plant in Hearne, Texas, June 10, 1983.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to divide equally eighty hours (80) at overtime rate among the following carmen:

J. R. Stevens	B. V. Renfro
M. Williams	B. G. Taylor
L. Hayes	B. L. Walker
J. G. Garcia	J. W. Dillon
N. Longoria	B. Salas

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 events giving rise to the instant Claim occurred at the Carrier's facilities at Houston, Texas.

On June 10, 1983, a group of cars were out of service awaiting wheel and axle assemblies at various locations at Houston, Texas. The cars which were owned by the GATX Corporation, had been in storage on various storage tracks. Upon being released from storage inspection revealed that the freight car wheels were not suitable for service.

On June 10, 1983, a hospital train was prepared and the cars were dispatched to the GATX Plant, Hearne, Texas, for repair. With the filing of the instant Claim, the Organization contends that the Carrier violated Rules 117 and 29 of the Controlling Agreement because it failed to keep the cars at its Houston facility to be worked by the Claimants who are Carmen.

Rule 117, the Classification of Work Rule, provides that Carman's work "shall consist" of duties that are enumerated within the Rule. Rule 29 provides that "none but mechanics or apprentices regularly employed" shall perform "mechanic's work as per the special rules of each craft ***." These Rules contemplate that the Carrier, which is a party to the Agreement with the Organization, has control over the work to be performed. In this case, the cars in dispute were not owned or controlled by the Carrier; rather, they were the property of the GATX Corporation. The Carrier did not have the materials needed to repair the cars. As a consequence, GATX requested the Carrier to send the cars to its home shop for repairs. Pursuant to AAR Rules, private or foreign line car owners have the prerogative, to either direct the Carrier to repair the car or direct it to send the car to the home shop for repairs by the owner or a contract shop when one of its cars become bad ordered. In compliance with the AAR Rules, the cars in question were returned to GATX.

There is nothing in the record to indicate that the Organization has been granted the exclusive right to perform work on privately owned cars. To be sure the Agreement does not provide for such an exclusive right; nor has the Organization demonstrated a past practice to support its Claim. In Second Division Award No. 7584, the following was stated:

> "Numerous awards have held that a Carrier is not responsible for assigning work on property which it neither controls nor legally owns. This Board recognizes and adheres to this principle. In this case the Carrier had no ownership rights in the transformer. It had no right to control or determine the work performed on the transformer. In the absence of such ownership rights or the right to control the work, the Carrier did not have the legal power to assign the transform work to its employes. Without this legal power and authority the Carrier could not violate the classification of work rule or its subcontracting agreements. The claim therefore, must be denied."

The Claim is denied.

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 10th day of September 1986.