

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(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 were utilized to build and load rail to Car No. 77090 at Waycross, Georgia on May 6, 1980 between 8:30 a.m. and 10:10 a.m. on Track No. 6 in the car yard.

2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen W. Chavis, H. H. McPhaul, D. N. Penland, G. H. Harris, F. L. Beck and D. W. Walker two (2) hours and forty (40) minutes at overtime rate of pay for said violation.

3. That further, the Seaboard Coast Line Railroad Company specifically violated General Rules 5, 15, 26 and Carmen's Special Rule 100 (Classification).

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 facts of this case are greatly contested by the parties.

The Organization's version of the precipitating incident is that on May 6, 1980, while working on Track 6 in the Car Department at Carrier's Waycross, Georgia facility, six (6) Maintenance of Way Employees cut and lifted four (4) rails with a mobile crane onto Car No. 77090 while Carmen were available to perform the work. The Carrier concedes that the disputed work was performed on May 6, 1980, for the purpose of transporting T & S equipment,

however, the Carrier contends that the Maintenance of Way Employees fabricated the track on the ground using tools which are normally assigned to their craft. The Carrier also contends that after the cutting operation was completed, a Maintenance of Way crane and operator, assisted by a Carman, lifted and guided the rail sections into position where they were subsequently attached onto the flatcar by Carmen; and that no members of the Maintenance of Way craft assisted in the hookup.

Based upon the Organization's perception of the facts as presented hereinabove, a Claim was filed on May 10, 1980, alleging that the Carrier violated the following portions of the Controlling Agreement: Rule 5 - Overtime Calls; Rule 15 - Seniority; Rule 26 - Assignment of Work; and Rule 100 - Classification of Work. The pertinent portions of Rules 26 and 100, which are particularly relevant in this dispute, read as follows:

"Rule 26

Assignment of Work

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft . . . "

Rule 100

Classification of Work

(a) 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, . . . joint car inspectors, car inspectors, writeup men, wreck derrick engineer and fireman, safety appliance and train car repairs; all steam and mechanically operated cranes on rails, except overhead electrical cranes; . . . and all other work generally recognized as carmen's work."

The Organization essentially objects to the Carrier's assignment of the disputed fabrication work to employees other than Carmen. According to the Organization, the cut rail became a component structural part of the modified flat car, and, in accordance with Rule 100, any work involving cutting, fabricating, lifting, positioning or securing of rail onto Car No. 77090 belonged exclusively to the Carmen's craft. In an effort to substantiate its version of the facts in this matter, the Organization has submitted affidavits from various eyewitness Carmen who allegedly observed Maintenance of Way Employees perform the disputed work on May 6, 1980. Additionally, the Organization also cites Second Division precedent in support of its position wherein it was found that the Carrier had improperly assigned to employees other than Carmen fabrication and installation of safety rails and carrying racks onto cars. (See Second Division Awards 4664 and 4864.)

The Carrier contends that rail-cutting does not constitute building and maintaining of freight cars as is contemplated in Rule 100 of the Controlling Agreement. The Carrier also contends that, historically, Carmen have not fabricated all equipment attached to cars, and the task, therefore, is not exclusively reserved to the Carmen's craft. Still yet further, regarding this same point, the Carrier also argues that "Maintenance of Way forces as well as others have constructed such appurtenances, ramps, etc., necessary to move their equipment . . ." on this property. Lastly, the Carrier contends that numerous Awards by this Division (Award No. 2797) have approved work, which is similar to that involved in this controversy, to be performed by Maintenance of Way employees.

The Brotherhood of Maintenance of Way Employees declined intervention as a third party in this dispute.


The Board has carefully read, studied and considered the complete record in this dispute and is persuaded that the Carrier's position, as presented herein, is correct and, therefore, must be sustained. Of particular significance in this determination, the Board notes the existence in the record of a July 1, 1980, letter from the Local Chairman to the Carrier's Shop Superintendent wherein it was agreed that ". . . carmen have not historically fabricated all equipment that is applied to cars by our craft . . ." Moreover, in that same letter, the Local Chairman further agreed with the Carrier's version of the critical facts in this matter save that he contended that two (2) Maintenance of Way Employees ". . . held the ends of the rail to keep it from swinging while it was being guided in place on the flat car." Based upon this Organization admission and waiver, the only remaining issue in dispute is whether Carmen or Maintenance of Way Employees are contractually permitted to guide rails while such operations are underway. Since the Carmen's Organization is the Petitioner in this controversy, it bears the burden of proving that the facts of the controversy are true and that the disputed act, as charged against the Carrier, was contractually improper. Even if the Board was to conclude that the Organization's version of the facts was correct, the Organization, nonetheless, has failed to cite specific contractual language or proffer probative evidence to show that the disputed work was reserved exclusively to the Carmen's craft. For this reason, the Board has no alternative but to deny the Claim in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1986.