Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11160
SECOND DIVISION Docket No. 11193
2-SSR-CM-'87

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

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

Dispute: Claim of Employes:

1. That the Seaboard System Railroad Company violated the controlling Agreement, in particular Rules 15 and 100 when Mulberry Railway Car Repair Company performed work at Rockport, Florida on August 22, 1984 and that work consisted of inspecting, removing two hatch covers and repairs on track C-1 located in Rockport Yard on car MOBX 51548.

2. That the Seaboard System Railroad Company be ordered to compensate Carmen D. J. Jones, H. Martinez, Jr., D. E. Koonce and D. Graham, III for eight (8) hours at overtime rate for each Carman.

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 August 22, 1984, an outside contractor removed hatch covers on a dumper car at the Carrier's Rockport, Florida Yard. This car is owned by Mobile Chemical Company, and the hatch covers were removed so that the car could be transported to the outside contractor's facility for repair.

The Organization claimed that this was a violation of Rules 15 and 100. Rule 15 is the Seniority Rule, and Rule 100 is the Classification Work Rule. That Rule states in pertinent part:

> "...Carman's work shall consist of building, dismantling (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel..."

The Organization noted that Carmen are employed at the Rockport point and removing hatch covers is a dismantling activity. The contractor used the tools of the trade, hammer, punch and torch. The Organization argued the location of the work is the problem, and all such work that is performed at the point belongs to the Carman's Craft.

The Carrier argued the car is privately owned by the Mobile Chemical Company. Rule 15 is seniority only, and with respect to Rule 100 no maintenance or dismantling was involved in this instance. The hatch covers were removed only so that the car could be transported to the repair facility designated by the car's owner. The Carrier claimed it was not their work to assign because they do not control the wishes of the car's owner. In any event, the Carrier stated the Claim was excessive.

Upon complete review of the evidence, the Board finds that under normal circumstances there would be no question that this work would belong to the Carman's Craft. The work performed was dismantling, and the tools of the trade utilized are tools of the Carman's Craft. The Organization provided numerous Awards to this effect. However, there is an element in this case that makes it somewhat different. The car was not under the control of the Carrier. It was owned by another and separate Corporation and it was that Corporation's expressed instruction that all repairs be performed by a contractor of their choice. Clearly, if the car had simply been removed from the Carrier's facility, the Organization would have no claim to this work. Their Claim rests on the fact that some work was performed on the property. The Carrier contended that this removal of the hatch covers was only performed so that the car could be transported off of the Carrier's property. There was no showing in the Organization's Submission that this was not the case. The Carrier has provided many Awards where Referees have found this issue of who controls the work to be the key element in dismissing the Organization's Claim. However, none of them covered work that was performed on the property. Under the very narrow circumstances of this case in which the Carrier allowed the owner's contractor to perform the minimum amount of work necessary in order to allow them to move the car off of the property, the Board finds that this work was beyond the control of the Carrier; and, therefore, it was not the Carrier's work to assign, and the Claim will be 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 11th day of February 1987.

LABOR MEMBERS DISSENT

TO

AWARD NO. 11160 (DOCKET NO.11193)

(Referee McAlpin)

The Majority erred when they Denied this Docket.

While properly recognizing that:

> "Upon complete review of the evidence, the Board finds that under normal circumstances there would be no question that this work would belong to the Carman's Craft. The work performed was dismantling, and the tools of the trade utilized are tools of the Carman's Craft. The Organization provided numerous Awards to this effect!!"

Leaving no doubt that the work was recognized as work that would belong to the Carman's Craft, and that this was dismantling work, and recognized the precedent Awards on this issue.

Then further, while recognizing that the work was done on the Carrier's property by clearly stating:

> "Their claim rests on the fact that some work was performed on the property."

and further recognizing that the Carrier could not provide any prior decisions that would support such actions, erroneously stated that:

"Under the very narrow circumstances of this case in which the Carrier allowed the owner's contractor to perform the minimum amount of work necessary in order to allow them to move the car off of the property, the Board finds that this work was beyond the control of the Carrier; and, therefore, it was not the Carrier's work to assign, and the Claim will be denied."

The decision was based on the erroneous theory that the Carrier did not have control of the work such a statement defies the precedent Awards recognized, as well as the practice in the industry.

The type of work that was done in this case was certainly work that needed to be done in order to move the car off the Carrier's property, in a safe manner, and should have been work performed by the Claimants.

This erroneous decision goes against all reasoning and the Agreement for these reasons we vigorously dissent.

Labor Members Dissent
To Award No. 11160
(Docket No. 11193)

R. A. Johnson

M. J. Cullen

Charles D. Easley

D. A. Hampton

Norman D. Schwitalla