

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rules 117 and 29, when they arbitrarily assigned carmen's work on SP 564191 to A&WE mechanic, Mr. Homer Dean, San Antonio, Texas, during the last part of April and first part of May, 1984.

2. That the Southern Pacific Transportation Company (Eastern Lines) violated Rule 32(a) of the controlling agreement when Superintendent, Mr. A. N. Henson, failed to give Local Chairman, Mr. K. S. Carter, any reason for declining this claim.

3. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate the following carmen, who were available and qualified to perform this work, for the time and date appearing next to their names:

"L. Sanchez - eight hours (8') at time and one-half
carmen's rate for May 2, 1984;

D. Boysen - eight hours (8') at time and one-half
carmen's rate for May 3, 1984;

N. Tovar - eight hours (8') at time and one-half
carmen's rate for May 4, 1984;

R. Guerra - eight hours (8') at time and one-half
carmen's rate for May 7, 1984;

T. Beza - eight hours (8') at time and one-half
carmen's rate for May 8, 1984;

J. J. Jobbes - eight hours (8') at time and one-half
carmen's rate for May 9, 1984."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

As third party in interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this case, but chose not to file a Submission with the Division.

The Claimants are all employed as Carmen by the Carrier at its San Antonio, Texas facility. On May 2, 3, 4, 7, 8, and 9, 1984, Carrier assigned an A&WE mechanic to perform repairs on a flat car on the San Antonio repair track; the work included redecking, strengthening of the car's superstructure, painting and stenciling the metal structure. The Organization subsequently filed a Claim on Claimants' behalf, challenging Carrier's use of an A&WE mechanic, instead of Carmen, to perform the repair work.

The Organization contends that the disputed work is Carmen's work as defined in Rule 117 of the current Agreement, the Carmen's Classification of Work Rule. Moreover, Rule 29 of the Agreement provides that "none but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special Rules of each craft except foremen at points where no mechanics are employed." The Organization asserts that Carrier violated these Rules when it assigned an A&WE mechanic to perform the disputed work.

The Organization further argues that there can be no doubt that the A&WE mechanic performed the disputed work; the A&WE mechanic admitted performing the work, and several Carmen submitted affidavits attesting to the same fact. The Organization asserts that contrary to Carrier's assertion, the record shows that the A&WE mechanic did not work in only an advisory or supervisory capacity.

The Organization also asserts that Carrier's Superintendent failed to give any reason for his denial of the Claim in August 1984. Rule 32(a) of the Agreement states that:

"The Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented."

The Organization argues that Carrier's Superintendent failed to follow the plain meaning of this Rule; Carrier therefore violated Rule 32(a), as well as Rules 117 and 29. The Organization contends that the Claim should be sustained.

The Carrier initially contends that it did not violate Rule 32(a) of the Agreement. The Superintendent's denial stated that "your claim is not supported by the agreed rules." Carrier asserts that this Board previously has held that such a statement does give a reason for denial in sufficient compliance with the Rules.

The Carrier next asserts that all of the disputed work was performed by Carmen in full compliance with the Agreement. Carrier contends that the A&WE mechanic's work was limited to supervising the replacement of bulkheads and the application of other apparatus. Moreover, the A&WE Mechanic told Carrier's Division Mechanical Officer that he did not perform the work of other crafts.

Carrier next contends that the Carmen's affidavits refer to work performed on a car that was retired from revenue service; the work was performed on a track adjacent to the A&WE Shops. Carrier asserts that work on such cars away from the Car Shops does not exclusively belong to Carmen. Carrier therefore contends that the Claim should be denied in its entirety.

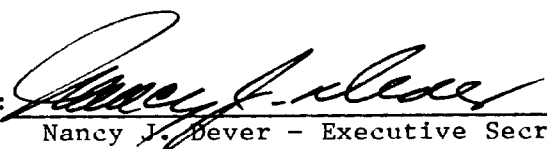
This Board has reviewed the evidence in this case, and we hereby find that the work at issue clearly belonged to the Carmen's craft and should have been assigned to Carmen. Hence, the Claim must be sustained. The Organization has presented substantial evidence that the work performed on the dates in question belonged to the Carmen's craft, and the Carrier violated the Agreement by allowing the work to be performed by an A&WE mechanic.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 10th day of June 1987.