

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
PARTIES TO DISPUTE: (  
(Seaboard System Railroad Company

STATEMENT OF CLAIM:

1. That the Seaboard System Railroad Company violated the controlling Agreement, in particular Rules 15, 26(a), 27(a) 99 and 100, when other than Carmen burned the hinges off a flip top roof on car number SCL 201335 on February 4, 1984 and removed the roof from the car at Rockport in Tampa, Florida.

2. That accordingly, the Seaboard System Railroad Company be ordered to compensate Carmen W. C. Forbes and J. S. Stephens, Jr. for four hours at carman rate.

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 Railway, Airline and Steamship Clerks was advised of the pendency of this dispute and did not file a Submission with the Division.

The significant events leading to this claim occurred on February 4, 1984. On that date, one of the Carrier's covered hopper cars had been pulled into a rotary dumper at the Rockport Shiploading Terminal. At some point, while the car was rotated to dump its load, the hinged top of the car was bent to the extent that when it was returned to an upright position, the bent top prevented the car from clearing the dumper apparatus. Maintenance forces then cut the hinges from the cartop and it was removed. This is the work being claimed by the Organization. The car then was removed from the rotary dumper and the transfer operation continued.

The Board points out that various contentions and other ramifications with respect to this matter for the first time have been presented in the parties' submissions to this Board. In keeping with established precedent, these first-time matters have not been considered in our deliberations.

With respect to what occurred on the property, the Carrier, in its initial denial, stated that the work at issue had been performed at Rockport since 1970 by its maintenance and operating forces in order to prevent delay to the unloading and subsequent loading of vessels.

In its April 9, 1984 rejection of the Carrier's denial, the Organization essentially provided its detailed analysis of the controlling rules and its reasons for concluding that the work at issue accrues to its craft. It did not address the past practice or urgency contentions advanced by the Carrier.

On July 6, 1984, the Carrier again rejected the Organization's claim. It provided additional support for its past practice argument, asserted that the removal of the car lids was not a repair or dismantling function and more clearly stated that the work claimed was actually "...an urgent or emergency situation requiring immediate attention so as not to interfere with the dumping operation."

In its reply of July 27, 1984 to the Carrier's July 6 denial, the Organization again essentially asserted that the removal of a car roof or lid from car is "dismantling" as contemplated by its Classification of Work Rule 100(a). It did not address the Carrier's past practice or emergency contentions.

The Board finds that the work at issue has not been challenged by the Organization until this claim, a period of approximately fourteen (14) years. The work at issue, consequently, is a past practice under the circumstances, and is of some long-standing duration. Moreover, the emergency assertions stand as advanced by the Carrier.

Accordingly, under all of the circumstances peculiar only to this claim, 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 13th day of April 1988.