

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

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

STATEMENT OF CLAIM:

1. That the Seaboard System Railroad Company, hereinafter referred to as the Carrier, was in violation of the Agreement, particularly Rule 30(a) and Appendices B and C, when Foreman R. Bean repaired the wall of caboose 6244 on September 19, 1984. Evansville, Indiana.

2. And accordingly, the Carrier should be ordered to additionally compensate Carman I. Knight, hereinafter referred to as the Claimant, for two (2) hours and forty (40) minutes pay at time and one-half rate as the result of said violation.

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.

As Train Extra 8034 South arrived of the Carrier's facility at Howard Yards, Evansville, Indiana, the inbound crew reported that a panel of the wall of caboose 6244 was loose. A Car Foreman instructed a Car Inspector by radio to report to the caboose upon completion of his "roll-by" inspection of the inbound train. As the Carman approached the caboose, he was informed by the Foreman that he was no longer needed. Since the Car Inspector was close to the caboose, he entered the caboose to find the Foreman with a hammer in his hand and the wall panel was secure. The Carrier's version of the facts is that the Foreman proceeded to the caboose carrying with him a hammer and some nails. Upon entering the caboose he observed that the condition of the wall panel was beyond the repair capabilities of the trainyard car inspectors, but

was safe for continued service to its destination without the need for repair. The Foreman then drove four (4) nails into the caboose ceiling in front of the wall panel. Although he believed that the wall panel was secure, it did not appear to be so. He drove the nails into the caboose ceiling to lessen any concern which may have been felt by the crew.

After carefully examining the record this Board finds that the work performed by the Foreman rightfully belongs to Carmen as provided in Rules 30 and 104 of the Agreement. Since the work in question was not assigned to the Howell Shop, the work should have been performed by Carmen, as required by Rule 104. Although the Carrier invokes the de minimus rule inasmuch as it claims that the work took only "a matter of minutes", it would have taken a Carman more than a "a matter of minutes" to engage in an inspection and determine what was needed to make the caboose safe to continue and to obtain the necessary tools to perform the actual work. Moreover, the position of the Carrier that the work performed by the Foreman was for "cosmetic purposes" rather than for the purpose of performing "repair or necessary work" is seriously undermined since he went to the caboose with a hammer and nails. By doing so this Board concludes that he had the intention of making repairs.

The Claimant was first out on the overtime board and was available and qualified to perform the work in question. Consistent with Second Division Award No. 10642, in applying the make-whole principle, the Claimant is to be awarded compensation at the straight time rate of pay rather than the rate of time and one-half.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1988.