Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11574
SECOND DIVISION Docket No. 11454
88-2-87-2-103

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
( and Canada
(
(CSX Transportation, Inc. (formerly the
(Baltimore & Ohio Chicago Terminal)

STATEMENT OF CLAIM:

1. That the Baltimore & Ohio Chicago Terminal Railroad Company (CSX Transportation) violated the terms and conditions of the current working Agreement, specifically Rules 76, 75, 23 and 22, when they allowed other than their Carmen to perform Carmen's work at their Forest Hill facility on August 14, 1986.

2. That the Baltimore & Ohio Chicago Terminal Railroad Company (CSX Transportation) be ordered to compensate Carmen S. Kowalenko, T. Gray and D. Hrynko eight (8) hours pay each at the time and one-half rate of pay account of this violation of the Agreement.

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.

In the instant case, the Organization claims a violation of Rules 76, 75, 23 and 22 due to Carrier's use of employees foreign to the Agreement to do Carmen's work. Rule 76, the Classification of Work Rule, includes the routine minor handling line repairs which are at the core of this dispute. The other Rules cover Qualifications, Assignment of Work and Seniority. There is no dispute that the Claimants held seniority and were qualified to do the disputed work. There is no dispute that the work performed by outsiders to the Agreement was routine Carmen's work.

On August 14, 1986, the Claimants were not used to perform the work of minor repairs on five TTX cars. The Organization argues that said work was under the control of the Carrier in that TTX cars were on the Carrier's lines.

As the handling line under AAR Rules, the Carrier had the responsibility to make routine repairs. The Carrier had the right to give such work to its employees, but in an effort to circumvent the Agreement conspired with TTX to lease facilities whereby TTX repaired its own cars. Nevertheless, the Carrier moved said cars to the leased facility to repair. The Organization argues that the work belonged by Agreement to Carmen. Such action violated the Agreement.

The Carrier denies any Agreement violation. It maintains on property that it did not "conspire and contrive" to circumvent the Agreement. It argues that the decision to lease facilities for the purpose of repairing their own cars is the right of the car owner. TTX did sign a lease and repaired their own cars with their own employees on leased property. The decision to repair their own cars was made by TTX. It is the Carrier's position that AAR Rules are not negotiated between the Carrier and Organization and are not before this Board as being violated. The Carrier further argues that not only does the owner of the car have a right to repair his own cars, but the Carrier lacks any control over the work.

This Board must find for the Carrier in the instant case. There is no probative evidence beyond assertion that the Carrier controls the disposition of TTX cars for minor running repairs when the car owner orders them to its leased facility. The Carrier denies that it has such control. AAR Rules are not applicable. It is not contested that the work on TTX cars was done on property which was under lease to TTX and therefor not under the control of the Carrier. Since the repairs took place outside the Carrier's control, it was outside the Agreement Rules which protect the employees.

Second Division Award 6839 is on "all fours" with the instant case. There, as here, the car owner leased facilities on the property to do its own repairs with its own employees. That Award states in pertinent part:

> "...there can be no doubt but that the BN has every legal right to lease its facilities as it sees fit. Thus WFE, the tenant, has every right to do its work on its leased tracks."

The Board further held that:

> "It is fundamental that Rules on Seniority, Qualifications, Classification of Work and Pre-existing Rights cannot extend to and encompass work that does not belong to the BN. The rules of the BN and System Federation No. 7 Agreement apply only to work that the Carrier has to offer."

We concur with the reasoning in that Award. This Board finds nothing herein of probative evidence which would alter that conclusion. There is no

evidence herein that the Agreement provides the employees with the exclusive right to perform the contested work on privately owned TTX cars. Based on the evidence and applicable Agreement provisions, the Claim must 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 31st day of August 1988.