

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/Division TCU  
(CSX Transportation, Inc. (former Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the Louisville and Nashville Railroad Company, hereinafter referred to as the Carrier, violated the Agreement, particularly Rules 104 and 30(a), when it instructed or authorized employes of Steel Processing Company to remove the automobile racks from four (4) cars by the use of acetylene-oxygen torches on July 3 and August 14, 15, 16 and 18, 1986.

2. And that the Carrier should be ordered to additionally compensate Carmen J. H. Starks, R. C. Lantz, R. E. Sullivan, D. Farthing, P. L. Reed, D. M. Bridges, C. G. Rollins, and M. A. Smith, hereinafter referred to as the Claimants, who were first out and available for call from the miscellaneous overtime board on each respective date, and were qualified for said work, the amount they would have earned had they been called and used, or eight (8) hours each at overtime 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.

On May 31, 1986 four cars were involved in a derailment at Tennessee City, TN. These cars were equipped with multi-level racks used to haul automobiles. The cars were re-railed to move to Nashville, TN at which time the racks were removed by an outside contractor and were stacked. The flat cars were returned to service.

The Organization stated that the language in Rules 104 and 30(a) is clear:

"Rule 104

CLASSIFICATION OF WORK

Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars..."

"Rule 30

Assignment of Work

None but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft..."

The Organization stated the racks are an integral part of the cars. Subcontracting language does not apply under these circumstances since all the items contained in that language were available and there was no notice to the Organization. The Organization noted that in the past cars were sold for scrap. In this case the cars were kept but the racks were sold, so dismantling was required. The Organization also stated that the Carrier controls this work and that they are responsible from the time of the derailment.

The Carrier argued that Rule 48 provides that in scrapping equipment only parts to be used again will be dismantled by mechanics or apprentices of their respective crafts. The Carrier argued that the auto racks attached to the four cars were destroyed during the derailment. The cars themselves were repairable and sent out for repairs before return to their respective owners. The racks and the cars to which they were attached were under second ownership by different companies, and those companies sold the racks only to a steel processing company as scrap. The steel processing company cut the racks loose and then cut the racks into pieces for ease of handling.

The Board finds that the Submission contains clear evidence that the cars were not under the control of the Carrier in that the cars and the racks were controlled and owned by other corporations. Numerous Awards of this Board have held that ownership and control are key to the Organization's Claim (see Second Division Award 11160). Since the work in question was performed only at the direction of the owner of the cars and the dismantling occurred only to facilitate the scrapping of the racks and not for repair, the Board finds it was not the Carrier's work to assign, and the Claim will be denied.

A W A R D

Claim denied.

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Award No. 11712  
Docket No. 11517  
89-2-87-2-159

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1989.