

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provisions of Rules 32 and 154 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman J. R. Evans (hereinafter "claimant") when the carrier utilized an outside contractor to perform Carmen's work.

2. That, accordingly, the claimant is entitled to be compensated for sixty (60) hours at the applicable pro rata rate for the carrier's 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.

The Organization summarizes its Claim in this dispute as follows:

"On February 3, 1987, the Carrier utilized the services of an outside contractor, consisting of six (6) workers and two (2) supervisors to perform inspection and repair work on hopper cars in the C&O Yard at Peach Creek, West Virginia. Approximately 160 cars were inspected and repaired."

The Organization contends that Rules 32 (a) and 154 reserve such work to Carmen. The Claimant, a qualified Carman, was on furlough at the time.

The Carrier states that the cars in question were owned by the Mansbach Metal Company and that the cars had developed a problem with their brake systems. The Carrier contends that it simply permitted Mansbach employees to inspect and repair its cars while on Carrier trackage.

The Board concludes that the work in question was clearly that reserved to Carmen and that use of other than Carmen for inspection and repair on Carrier property was in Rule violation. Second Division Award 10715 reviewed a similar situation in which employees of an outside company entered Carrier property and performed work on hopper cars prior to their departure. That Award found:

"From the record, we are convinced that Camp Branch Spur is located on Carrier's property, and also that the Southeast Coal Company's employees were performing protected work. To be sure, we are not unmindful that work performed by the coal company's employees was not of a significant technical nature, but it was nonetheless inspection work that was not incidental to an identifiable main function. Minor repairs were evidently necessitated and even if of limited nature were still cover by Rules 104 and 30 (a) of the Carmen's Agreement. As such, the Agreement was violated."

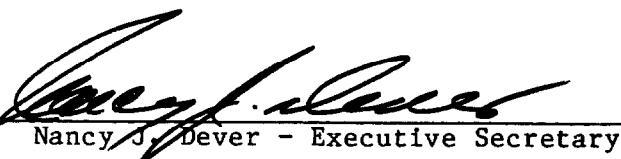
With this conclusion, the Board finds the furloughed employee is a proper Claimant. Since the work was performed by six employees of the outside firm on a single day, the suitable remedy must necessarily be approximated. The Board finds payment of 40 hours' pro rata pay to be appropriate.

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 1st day of April 1992.