

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provisions of Rule 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 Carmen C. Colegrove and D. Harmon (hereinafter "claimants") when the carrier utilized persons other than carmen to perform carmen's work, specifically, the caulking of cars.

2. That, accordingly, the claimants are entitled to have this work of caulking cars returned to them and the carrier be ordered to return the work of caulking cars back to the Carmen's Craft.

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 charges that Carrier violated Rule 154 of the Agreement when a Supervisor assigned a Painter on May 5, 1989, to caulk box cars at the Raceland, Kentucky Car Shop. It asserts that the work performed was not connected with the appearance of the box cars, but instead was a method of sealing the weather out of the cars. It further points out that the work was historically performed by members of the Carman's craft and also that the Carmen Claimants had the job for a considerable time.

Carrier contends the caulking was done as a touch up procedure as an antecedent requirement prior to releasing the box cars for revenue service. Specifically it stated in its denial letter of August 17, 1989:

"By letter dated February 11, 1987, you claimed that Carmen were doing Painters' work when Carmen applied rust preventative on new side lap joints. This work was being performed at the Burner Shop. You further stated that historically such work was performed exclusively by members of the Painter craft.

The Carrier responded to that claim noting that in that instance, it would not be feasible in the amount of time involved to send Painters from the extreme west end (Paint Shop) to the extreme east end (Burner Shop) of Raceland Car Shop for what amounted to ten (10) minutes work per car. Now, by this grievance, you are claiming that Carmen should be sent to the Paint Shop to do what amounts to, in this instance, ten (10) minutes, or less, work per car.

General Foreman Paint Shop, T. R. Horan, instructed Painter Steven Rice to apply caulking to box cars during the touch up procedure. The touch up procedure is done at the Paint Shop after the car has been painted and prior to releasing the car for revenue service. The procedure is as the name implies, touching up any areas missed during the painting procedure. If the applying of caulking has been missed, it will be touched up at this time."

The Organization reiterated its basic position on appeal, but added in its August 22, 1989 letter that the application of approximately eighty feet of caulking per car could hardly be considered as a touch up job. It also noted in its November 6, 1989 appeal to the Director of Labor Relations that more than one car was "done" per day. It stated in pertinent part:

"In Mr. Brigman's letter of declination dated August 17, 1989, he suggests that it is not feasible to send a Carman from one end of the Shop to the other to work on a car for approximately ten (10) minutes to perform this work; however, it should be noted that more than one car is done a day and that ten (10) minutes per car times forty (40) cars amounts to considerably more than an insignificant amount of time."

The Director of Labor Relations denied the claim by letter dated April 28, 1990, and noted that while allegations were made that caulking work had always been performed exclusively by Carmen, the Organization offered no proof to affirm the asserted violation of Rule 154. It observed that Rule 154 does not mention the work of caulking and said Rule applies to both Carmen Painters and Carmen.

In considering this case, the Board concurs with Carrier's position. As the moving party and particularly where a purported violation is based upon an interpretation of that portion of the Classification of Work Rule reading "and all other work generally recognized as Carmen's work," the Organization has the responsibility to establish via concrete evidence all elements of its claim. This means submitting compelling documentary evidence showing unmistakably the contested work was exclusively performed systemwide by members of the petitioning craft. In the case before us, the Organization has made assertions and arguments that appear, at least, on their face persuasive, but these positional statements fall short of the probative specificity needed to establish a contention of past practice. In our judgment, the evidence submitted does not support the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bevier - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.