

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12644  
Docket No. 12378  
94-2-91-2-171

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as 'carrier') violated the service rights of Carmen R. Cales and A. Hales (hereinafter 'claimants') and the provisions of Rules 32 and 154 of the controlling Agreement when the carrier allowed an outside concern to perform Carman's work.
2. Accordingly, the claimants are entitled to be compensated for (8) hours at the applicable time and one-half rate for said violation. Further that the claimants are entitled to be compensated as provided for under the provisions of Article V of the April 24, 1970 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 employe 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 7, 1989, two employees of the Scholtz Construction Company installed a "car kicker" on the transfer table of the Paint Facility at Raceland Car Shop in Russell, Kentucky. The Organization contends that this "car kicker" is a device which replaces a car puller or winch, a device Carmen have historically installed.

The Organization further argues that the Carrier's actions violated Rules 32 and 154 of the Agreement, which provide as follows:

"Rule 32(a) Effective November 1, 1964--None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed."

"Rule 154(a) Carmen's work shall consist of building maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

Careful review of the cited Rules fails to reveal any express language that would reserve the work in question to Carmen. While Rule 154 specifies a number of duties performed by Carmen, "installing car pulling device" is not one of them. Moreover, the Organization's assertion that members of its craft have historically, as a matter of past practice, installed car pulling devices is just that -- an assertion unsupported by probative evidence. As the moving party in this dispute, it was the Organization's burden to come forward with evidence which would prove the elements of its claim. Absent an express reservation of work in the Agreement or

evidence of historical practice, that burden of proof has not been met in this case. See, Second Division Awards 11197 and 6975.

This Board also rejects any contention by the Organization that Carrier failed to respond to the initial claim in a timely manner, as set forth under Agreement Rule 35. Our review of the correspondence during the handling of this dispute on the property indicates that Carrier did respond to the Organization's June 1, 1989 letter within the required 60 days. Moreover, Carrier identified the claim that was being denied with sufficient specificity, in our view, so as to comply with the contractual requirements. Accordingly, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.