

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13437
Docket No. 13360
99-2-98-2-48

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union**
PARTIES TO DISPUTE: (
**(CSX Transportation, Inc. (former Chesapeake
(& Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc, (hereinafter referred to as carrier) violated the controlling Shop Crafts Agreement specifically Rule 32(a) and 154(a), when on October 23, 1996, other than Carmen were assigned to perform work reserved exclusively for Carmen.**
- 2. Accordingly, the Carrier be instructed to compensate Carman M. H. Ford ID #627232 six (6) hours pay at Carman’s rate and one half for the said 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimants possess point seniority at Clifton Forge, Virginia. Privately owned tank cars were on a siding (or in a yard) located about 15 miles from Clifton Forge, at Covington, Virginia.

On the claim date, Carmen were sent from Clifton Forge to Covington to lock and blue flag certain tracks containing the tank cars so that employees of the owner's choice could safely perform "unspecified" work.

The Carrier denied the claim contending that the work performed by the outside concern was "to inspect safety valves and rupture discs on some of their tank cars" and that the Claimants enjoyed point seniority and had no seniority rights at Covington.

The Organization contends that its members have the exclusive right to perform any and all work performed on rail cars, and that they have been repeatedly sent from Clifton Forge to work at Covington.

Repairs on privately owned cars done by personnel of the car owner's choice has been a source of dispute on more than one occasion, so this is not a case of first impression.

In Second Division Award 7584 involving these same parties, the Board held, in denying the claim that:

"Numerous awards have held that a Carrier is not responsible for assigning work on property which it neither controls nor legally owns. This Board recognizes and adheres to this principle."

In Second Division Award 11160, involving the Organization and the former Seaboard System Railroad, the Board held:

"Upon complete review of the evidence, the Board finds that under normal circumstances there would be no question that this work would belong to the Carman's Craft. The work performed was dismantling, and the tools of the trade utilized are tools of the Carman's Craft. The Organization provided numerous Awards to this effect. However, there is an element in

this case that makes it somewhat different. The car was not under the control of the Carrier. It was owned by another and separate Corporation and it was that Corporation's expressed instruction that all repairs be performed by a contractor of their choice."

In this instance, work performed on the privately owned tank cars by personnel of the car owner's choice was to check for and, where necessary, repair rupture discs and safety valves, which involve the loading and unloading process.

In Second Division Award 13196, involving Carmen on the Delaware and Hudson Railway Company, the Board held:

"Numerous Awards emanating from this Board as well as Public Law Boards have consistently held that Classification of Work Rules and/or Scope Rules apply only to work under the control of the Carrier. Among many Awards, see Second Division Awards 11574, 10980, and 8053. The Organization, on the property, did not provide any Awards to counter these holdings."

See also Second Division Award 10979.

Regarding the Carrier's point seniority argument and its contention that only Carmen's work at the point of their seniority is work they can lay claim to, it is the Board's opinion that the argument lacks sufficient facts upon which to issue a ruling. Accordingly, we decline to do so.

It is sufficient for the Board to find that enough evidence exists to show that the disputed work was done by personnel of the private car owner's choice and sufficient on-property Awards have held that such work on private cars does not violate the controlling agreement.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of June 1999.