

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13467

Docket No. 13253

99-2-97-2-19

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Louisville & Nashville
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Louisville and Nashville Railroad Company, (now a part of CSX Transportation and hereinafter referred to as Carrier) violated the controlling Agreement, in particular, but not limited to Rules 29, 30, 104, and letter Agreement dated November 11, 1976, rights of Chattanooga, TN (L&N) Carmen J. M. Ridge and W. F. Burnes, (hereinafter Claimants) when carrier instructed and/or allowed outsiders to this property, Atlanta, GA Seaboard Coast Line Railroad (SCL) Carmen K. J. Atkinson on January 6, 1996 and J. L. Jackson on January 8, 1996 to perform carman's work of mechanical inspections on freight car OUCX 91038 on L&N property at Fairmount, GA.
2. Carrier should now be ordered to compensate Claimants for four (4) hours pay each at the pro rata rate of pay account of violation of Claimants' contractual rights to work performed on January 6 and January 8, 1996, by outsiders to this property.”

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.

In the case at hand the Organization alleges that the Carrier violated Rules including, but not limited to, Rules 29, 30, and 104 of the Agreement and a letter Agreement dated November 11, 1976. The alleged violations occurred on January 6 and 8, 1996, when Seaboard Coast Line Railroad Carmen conducted mechanical inspections of an overheated wheel on car OUCX 91038 on Carrier's train R168, on L&N property at Fairmount, Georgia. The Organization asserts that Carmen J. M. Ridge and W.F. Burnes, who were regularly employed as Carmen on Carrier's former Louisville and Nashville Railroad (L&N) at Chattanooga, Tennessee, had contractual rights to the mechanical inspection work that was instead performed by "outsider" Carmen on the dates in question.

The record contains maps, signed (but undated) affidavits, and other documentation in support of the Organization's position that the work in question was performed on L&N property by SCL employees. The Organization further asserts that the Carrier violated Rule 29 - Seniority, Rule 30 - Assignment of Work, and Rule 104 - Classification of Work, by using Carmen from another seniority district to perform work identified under Rule 104. The Organization takes exception to the Carrier's assertion that an emergency condition was created when car OUCX 91038 became disabled. The Organization seeks compensation of four hours pay at the pro rata rate of pay for each Claimant.

The Carrier did not dispute that the work in question was performed by SCL employees on L&N property, but declined the Organization's claim based on the

Carrier's position that the disabled car created an emergency condition. Carrier's letter dated May 28, 1996, by W. E. Griffin in pertinent part states Carrier's position concerning the issue of emergency status:

" . . . The initial inspection was done by Atlanta Carmen because of an emergency situation created by the fact that the defective car was spotted on a track that was needed for switching CSX Transportation customers in Huber. . . ."

The Carrier states that the proper Organization forces in the L&N Chattanooga, Tennessee, Car Shop were contacted on January 6, 1996, and informed that the disabled car, which had been left on the private siding of Carrier customer Huber Industries, needed to have the wheel inspected. The Train Dispatcher was informed by the Chattanooga, Tennessee, Car Shop that its wheel truck was out of service until Monday, January 8, 1996. Carrier then contacted the Atlanta Car Shop (SCL) to inspect, but not replace the car's wheel. It was determined that the car could not be moved until the wheel was replaced. A second inspection of the car was conducted by SCL forces from Atlanta on Monday, January 8, 1996. That same day Chattanooga Car Shop replaced the wheel.

The basic facts in this case are not in dispute. Inspections of the disabled car on both dates in question were conducted by SCL Carmen on L&N property. Initially, the Chattanooga Car Shop forces were called to inspect and replace the wheel, but Chattanooga Car Shop personnel informed the Train Dispatcher that personnel from that shop could not respond because their Wheel Truck was being repaired. In pertinent part the Rules and Letter of Agreement allegedly violated provide:

"RULE 29 - SENIORITY

. . . 29(b) Seniority of employees in each craft covered by this agreement shall be confined to the point employed for those who perform work as per special rules of each craft . . .

RULE 30 - ASSIGNMENT OF WORK

. . . 30(a) None but mechanics and apprentices regularly employed as such shall do mechanics work as per special rules of each craft . . .

RULE 104 - CLASSIFICATION OF WORK

Carman's work shall consist of. . .inspecting all passenger and freight cars, both wood and steel . . .

Letter Agreement dated November 11, 1976

. . . If mechanical forces are needed north of Cartersville, L&N forces will be used. If mechanical forces are needed at Cartersville or south thereof, SCL forces may be used."

Each of the aforementioned Rules and the Letter Agreement would support the Organization's position if the incident in question did not warrant urgent action. Carrier's characterization of the situation as an "emergency" is reasonable. Numerous Awards support Carrier latitude in emergency situations. The Board read the record and notes the applicability of Third Division Award 17795, cited in Third Division Award 19140:

" . . .We have held that in an emergency the Carrier should be permitted to exercise latitude in meeting the situation. There is nothing in the record to indicate that Carrier's purpose in the use of employees of another seniority district was to evade the application of the seniority principle or to circumvent the Agreement."

The Board concurs with the holding in the above case.

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 5th day of October 1999.